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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1565

SOUTHERN OHIO COAL COMPANY
AND OHIO POWER COMPANY,
Petitioners,

vs.

UNITED MINE WORKERS OF AMERICA,

UNITED MINE WORKERS OF AMERICA,
DISTRICT No. 6,

AND UNITED MINE WORKERS OF AMERICA,
LOCAL Nos. 1890, 1886 AND 1957,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, Southern Ohio Coal Company and Ohio Power Company, pray that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the Sixth Circuit entered in these proceedings on February 11, 1977.

I. OPINIONS BELOW

The February 11, 1977 Opinion of the Court of Appeals, not yet officially reported but appearing at 94 LRRM 2609, rendered in six cases which had been consolidated for consideration, appears in the Appendix to this Petition for Writ of Certiorari. The unreported Opinions of the United States District Court for the Southern District of Ohio were rendered on April 23, 1975, June 19, 1975, August 14, 1975, September 9, 1975, and August 4, 1976. Each of these Opinions appears in the Appendix to this Petition for Writ of Certiorari.

II. JURISDICTION

Individual judgments were made and entered on February 11, 1977, by the United States Court of Appeals for the Sixth Circuit in the six cases which had been consolidated for consideration. A copy of each judgment appears in the Appendix to this Petition for Writ of Certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

III. QUESTIONS PRESENTED

(A) Can a federal district court, in an action under 29 U.S.C. § 185, enjoin a labor union from engaging in a pattern or practice of striking over issues which are arbitrable under a collective bargaining agreement when that union has engaged in a series of strikes over numerous issues which are sometimes distinct as to specifics but which are all arbitrable under that agreement?

(B) Is a labor union, whose members at a particular work site repeatedly engage in strikes over issues which are arbitrable under a collective bargaining agreement, liable for the actions of those members when all or substantially all of such members engage in such strikes and/or when the union, with

knowledge of past strikes by such members over arbitrable issues and possessing the power and authority to undertake such action, has taken no action which can reasonably be expected to prevent further such strikes or takes no such action to end an existing strike?

(C) Can a federal district court issue injunctive relief or enforce a previously issued injunction against a local union which is engaged in a strike at a particular work site by refusing to cross the picket line of fellow members of the same international union if the picket line is in support of an illegal strike over an issue which is arbitrable under the single collective bargaining agreement covering both the union members who are picketing and those who refuse to cross the picket line?

IV. STATUTORY PROVISIONS INVOLVED

United States Code, Title 29:

§ 101. Issuance of restraining orders and injunctions; limitation; public policy.

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

[United States Code, Vol. 7, p. 7991 (1970)]

§ 102. Public policy in labor matters declared.

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

[United States Code, Vol. 7, p. 7991 (1970)]

§ 109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions.

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

[United States Code, Vol. 7, p. 7993 (1970)]

§ 185. Suits by and against labor organizations.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of

another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

[United States Code, Vol. 7, p. 8014 (1970)]

V. STATEMENT OF THE CASE

This case was before the United States Court of Appeals for the Sixth Circuit on six consolidated appeals from four orders of the United States District Court for the Southern District of Ohio in a case arising from a series of work stoppages at three coal mines owned and operated by Ohio Power Company and Southern Ohio Coal Company [hereinafter collectively "the Company"] – Meigs No. 1, Meigs No. 2 and Raccoon No. 3. The miners employed at these mines are members of the United Mine Workers of America, its District No. 6, and its Locals 1890, 1886 and 1957. Southern Ohio Coal Company and the United Mine Workers are signatories to the National Bituminous Coal Wage Agreement of 1974.

On April 14, 1975, the Company filed an amended complaint in the District Court seeking injunctive relief and damages for breach of the collective bargaining agreement. The mandatory arbitration provision of that agreement states:

> Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

The Sixth Circuit found that this section provides a five-step procedure, culminating in arbitration, for the purpose of resolving all disputes arising between the parties. The parties

also agreed to "maintain the integrity" of the contract by utilizing this provision to settle "all disputes and claims" save those "national in character."

Jurisdiction was based on 29 U.S.C. § 185. Named as defendants were the International, its District No. 6, and its Locals 1890, 1886 and 1957. The amended complaint stated that the union members employed at the three mines were engaged in a continuing practice of striking over arbitrable grievances in violation of the no-strike pledge implied from the mandatory arbitration clause. It also alleged that the strikes had been condoned and encouraged by the International and its District No. 6.

The initial motions for preliminary injunctions were denied by the District Court for the reason that the particular work stoppages in existence at the time of the filing of the amended complaint had ceased, but the Court warned that future work stoppages during the pendency of the action could result in injunctive relief for the Company.

On May 28, 1975, the employees at Raccoon No. 3, who are members of the International, District No. 6, and Local No. 1957, failed again to report for work. This work stoppage was caused by the assignment of a supervisor to whom the miners objected. The members of Local No. 1957 again failed to report for work on June 2, 1975. This time, the strike was occasioned by a computer error that shortchanged a number of miners' pay checks. On June 19th, the District Court granted a preliminary injunction against Local 1957 but declined to extend the order to District No. 6 and the International. The Court found that the work stoppages of May 28 and June 2 resulted from disputes over arbitrable grievances and, therefore, violated the union's no-strike obligation. The District Court also found that these strikes were only the latest of a series of stoppages over arbitrable disputes where the miners failed to file grievances but simply closed the Raccoon Mine No. 3 for a short period, and it noted that the Company was ready and willing to arbitrate the grievances. Finally, the District Court determined that a pre-

liminary injunction was warranted under ordinary equity principles because the Company was suffering irreparable injury from the repetitious work stoppages and would suffer more from the denial of injunctive relief than would the union from its granting.

The District Court enjoined Local 1957 to use the arbitration provision and not strike to resolve arbitrable grievances:

> To refrain from engaging in any further work stoppage at Raccoon No. 3;
>
> To refrain from committing, doing, uttering, writing, or communicating, any word, act, or deed, written, spoken or performed which is intended, designed or calculated to induce, persuade, order, cause or bring about the failure or refusal of any member of the defendant to report for work or to work at Raccoon No. 3;
>
> To utilize the grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1974, with respect to arbitrable grievances; and
>
> To take all action which may be necessary to assure compliance with the terms of the National Bituminous Coal Wage Agreement of 1974.

An appeal by the Company from the denial of relief as to the International and District No. 6 and an appeal by Local 1957 from the grant of relief followed this Order.

On July 28, 1975, the union members at the Meigs No. 2 Mine failed to report for work. The Company sought a preliminary injunction against the International, its District No. 6, and its Local No. 1886. A hearing was set for August 11, 1975, but the District Court denied the requested relief without receiving evidence of any facts after being informed at the outset of the hearing that the work stoppage, which had been in progress for two weeks, had terminated a few hours prior to the commencement of the hearing. An appeal by the Company from the denial of relief followed this Order.

On August 19, 1975, mine workers at all three mines failed

to report for work. The Company sought preliminary injunctive relief against Locals 1886 and 1890, District No. 6 and the International, and sought contempt against Local 1957. The District Court found that these work stoppages were primarily attributable to the Company's distribution to its supervisory personnel of a document entitled "Guidelines for Dealing with Mine Health and Safety Committee." The District Court also noted that the presence of non-employee pickets at the mine sites and the shooting of a member of Local 1886 contributed to the prolonging of these work stoppages. As before, the District Court found that no grievances had been filed regarding the disputes and that the strikes were over arbitrable issues and, thus, in violation of the union's implied no-strike agreement. The District Court stated that there had been ample demonstration by the Company of a pattern of activity by the local unions reflecting disregard of the contractual provisions of the parties' collective bargaining agreement and showing a probability that the local unions would continue such strikes whenever they again became dissatisfied with some condition of work at the mines. The District Court concluded that the equities supported issuance of preliminary injunctions against Locals 1886 and 1890, and it entered orders identical to the decree imposed on Local 1957. However, the District Court refused to extend the injunctions to District No. 6 and the International at any of the three mines. An appeal by the Company from the denial of relief as to the International and District No. 6 and a joint appeal by Locals 1890 and 1886 from the grant of relief followed this Order.

In July, 1976, the mines were again closed. This shutdown was caused by the union members' refusal to cross picket lines set up at the mine sites by United Mine Workers' members employed at mines other than the three subject mines. The Company filed motions for orders to show cause why each local union should not be held in contempt on the basis that the refusal to cross the picket lines or arbitrate the disputes were violations of the preliminary injunctions. The

District Court denied the motions, without hearings, on the authority of this Court's decision in *Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397 (1976), which had been decided in the interim since the preliminary injunctions were issued. The District Court found the miners' refusal to cross the picket lines to be protected activity and not subject to injunction. Finally, the District Court concluded that *Buffalo Forge* placed in question the breadth of the preliminary injunctions and required the denial of the Company's motions for orders to show cause under the then existing circumstances. An appeal by the Company from the denial of relief followed this Order.

On appeal, the Sixth Circuit affirmed the District Court's findings that the series of work stoppages giving rise to each preliminary injunction against each of the three local unions involved issues which the union was contractually bound to arbitrate, that the equities supported issuance of each injunction, and that the guidelines established in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), had been properly applied in issuing each injunction. The Sixth Circuit also affirmed the District Court's refusal to extend the preliminary injunctions to the International and its District No. 6, rejecting the application of certain agency principles as required by 29 U.S.C. § 185 and applied by the Third Circuit in *Eazor Express, Inc.* v. *Int'l. Brotherhood of Teamsters*, 520 F. 2d 951 (3rd Cir. 1975), *cert. denied*, 424 U.S. 935 (1976), and other Courts of Appeals, *e.g.*, *Wagner Electric Corp.* v. *Local 1104, Int'l. Union of Electrical, Radio and Machine Workers*, 496 F. 2d 954 (8th Cir. 1974); *Vulcan Materials Co.* v. *United Steelworkers of America*, 430 F. 2d 446 (5th Cir. 1970), *cert. denied*, 401 U.S. 963 (1971). It noted that, while a union's "studied ambivalence" toward a work stoppage may constitute sufficient inducement, encouragement, and condonation of a strike to expose it to injunctive relief and damages, there was no encouragement, condonation or inducement of the strikes through either action or inaction

on the part of the International or District No. 6, in these proceedings.

The Sixth Circuit further determined that, consistent with *Boys Markets*, prospective injunctive relief, encompassing future strikes over disputes in areas which have caused stoppages in the past, could be granted to preserve the national policy of fostering arbitration where a union has engaged in a continuing practice of striking over arbitrable disputes and the *Boys Markets* guidelines are satisfied. However, in determining the permissible scope and requisite clarity of such injunctions, the Sixth Circuit stated that, while *Boys Markets* permitted the grant of prospective relief, § 9 of the Norris-LaGuardia Act, 29 U.S.C. § 109, required a narrow injunction. On this basis, the Court vacated the previously issued preliminary injunctions. In adopting this view, the Sixth Circuit rejected the conclusion of the Seventh Circuit in *Old Ben Coal Corp.* v. *Local No. 1487, United Mine Workers*, 500 F. 2d 950 (7th Cir. 1974), that a showing of a past pattern and practice of striking over arbitrable issues warranted the broader restraint on future strike activity which mirrored the past pattern and practice of striking over arbitrable issues in order to relieve the aggrieved party of the irreparable injury caused by numerous work stoppages. It likewise declined to follow the underlying rationale to the same effect which is reflected in the decisions of the Ninth Circuit, *Donovan Construction Co.* v. *Construction, Production & Maintenance Laborers Union, Local 383*, 533 F. 2d 481 (9th Cir. 1976), and the Tenth Circuit, *CF&I Steel Corp.* v. *United Mine Workers of America*, 507 F. 2d 170 (10th Cir. 1974).

The Sixth Circuit also affirmed the District Court's denial of the Motions for Orders to Show Cause against the three locals filed by the Company in July, 1976. The Court concluded, as had the District Court, that *Buffalo Forge Co.* v. *United Steelworkers of America, supra*, controlled the disposition of the Company's motions, even though the pickets at each of the Company's three mines were seeking support of a strike in violation of the mandatory arbitration provisions

of the same collective bargaining agreement as that which covered the Company's striking employees and in spite of differences in wording between the arbitration clause in *Buffalo Forge* and that in the instant case.

VI. REASONS FOR GRANTING THE WRIT OF CERTIORARI

The decision of the United States Court of Appeals for the Sixth Circuit should be reviewed and reversed because:

(A) as to the permissible scope of injunctive relief, it conflicts with decisions of this Court such as *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), and *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368 (1974), insofar as those decisions are grounded in the federal labor policy of promoting the utilization of the arbitration provisions of a collective bargaining agreement through the use of the remedial mechanism of injunctive relief to the extent necessary to preserve such arbitration process; it conflicts with decisions of other Courts of Appeals [such as, *Old Ben Coal Corp.* v. *Local 1487, United Mine Workers*, 500 F. 2d 950 (7th Cir. 1974); *Donovan Construction Co.* v. *Construction, Production & Maintenance Laborers Union, Local 383*, 533 F. 2d 481 (9th Cir. 1976); and *CF&I Steel Corp.* v. *United Mine Workers of America*, 507 F. 2d 170 (10th Cir. 1974)] relative to the permissible scope of injunctive relief, the imposition of which is occasioned by the conduct of a party of repeatedly violating the arbitration provision of a collective bargaining agreement; and it conflicts with decisions of this Court such as *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187 (1949), and *May Dept. Stores* v. *NLRB*, 326 U.S. 376 (1945), relative to the scope of injunctive relief required by the conduct of the party to be enjoined;

(B) it conflicts with the decision of this Court in *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715 (1966), and the decisions of other Courts of Appeals [such as *Eazor Express, Inc.* v. *Int'l. Brotherhood of Teamsters*, 520 F. 2d 951 (3rd Cir. 1975), *cert. denied*, 424 U.S. 935 (1976); *Vulcan Materials Co.* v. *United Steelworkers of America*, 430 F. 2d 446 (5th Cir. 1970), *cert. denied*, 401 U.S. 963 (1971); and *Wagner Electric Corp.* v. *Local 1104, Int'l. Union of Electrical, Radio and Machine Workers*, 496 F. 2d 954 (8th Cir. 1974)] relative to the liability of a union under the agency test applicable to litigation which is jurisdictionally based on 29 U.S.C. § 185; and

(C) it decides an important question of federal law which has not been, but should be, settled by this Court, in the Sixth Circuit's application of this Court's decision in *Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397 (1976), to a substantively dissimilar setting where previously articulated concepts of federal labor law, apparent in decisions of this Court, require imposition of injunctive relief to preserve the arbitration process and prevent illegal strikes in derogation of such a contractual commitment.

Should this Court fail to grant certiorari in this case and resolve the issues presented, the Sixth Circuit will have established three precedents, any one of which could have a decisive effect, adverse to established federal labor policy, on the future conduct of this litigation, on future cases concerning the enforcement of collective bargaining agreements, and in the area of labor-management relations.

A. The Sixth Circuit's Decision Conflicts With Decisions of This Court and Other Courts of Appeals in Unduly Restricting the Scope of Injunctive Relief to Enforce the Arbitration Provision of a Collective Bargaining Agreement.

By refusing the proper measure of injunctive relief mirroring the past conduct of the party to be enjoined, the Sixth Circuit has seriously eroded the remedial efficacy of injunctive relief as a general matter and disadvantaged a party who seeks

to implement the arbitration and the implied concomitant no-strike provisions of a collective bargaining agreement. Its decision conflicts with those of this Court as to the proper scope of injunctive relief as a remedial device generally and as to the utilization of such relief to promote the implementation of arbitration and implied no-strike agreements of collective bargaining contracts. In limiting the scope of available relief, this decision, contrary to the decisions of this Court and the expressions of at least three other Courts of Appeals, fosters industrial strife and additional litigation rather than the use of the contractual arbitration process.

In the general area of remedial considerations in federal court litigation, this Court has established that the permissible and proper parameters of injunctive relief coincide with the conduct of the party to be enjoined toward the end that one who has demonstrated a proclivity to a course of improper conduct should be restrained from committing future acts which would perpetuate such a pattern and practice of improper conduct. This Court has recognized that effective relief is denied a complaining party in such circumstances who is granted only that protection afforded by an order so narrow that it can be easily evaded by an imaginative adversary. *E.g.*, *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187 (1949); *May Dept. Stores* v. *NLRB*, 326 U.S. 376 (1945).

In the more specific area of labor-management litigation, this Court has judicially recognized and protected the federal policy of promoting the peaceful settlement of labor disputes through contractual arbitration processes in a consistent course of decisions, excepting the subsequently overruled *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962). *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368 (1974); *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970); *Steelworkers Trilogy, United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957).

The most significant aspect of this Court's protection of this important tenet of federal labor policy has been requiring adherence to prior express and implied promises made in a collective bargaining agreement through the remedial measure of injunctive relief. In reaching the conclusion that injunctive relief is a necessary device for enforcement of labor-management agreements and in the prevention of industrial strife, this Court considered and resolved several intermediate but fundamental issues centering largely on the apparent conflict between the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.*, and the Labor-Management Relations Act, 29 U.S.C. § 185.

Initially, it was determined that the procedural requirements of Norris-LaGuardia do not apply to actions seeking to enforce arbitration since "the failure to arbitrate was not a part and parcel of the abuses against which the [Norris-LaGuardia] Act was aimed." *Lincoln Mills*, 353 U.S. at 458. Later, this Court expressly capsulized the significant role of the federal judiciary in insuring the fulfillment of contractual promises to resolve disputes by arbitration as one not only to protect private interests involved in the collective bargaining process but also to vindicate the public good by avoiding labor strife:

> The judiciary sits in these cases to bring into operation an arbitral process which substitutes a regime of peaceful settlement for the older regime of industrial conflict.
>
> *Warrior & Gulf Navigation*, 363 U.S. at 584-85.

In further detailing the essential role of the federal courts in advancing the federal policy of avoiding the serious economic consequences of labor strife, this Court recognized the shift in congressional emphasis from protection of the "nascent labor movement" (evidenced by the Norris-LaGuardia Act) to appreciation of the relative parity in bargaining power

between labor and management resulting in a need for encouragement of arbitration as a means of peacefully resolving labor disputes (evidenced by 29 U.S.C. § 185). *Boys Markets*, 398 U.S. at 251. The net results of this recognition of the change in the realities of labor-management relations were the conclusion that injunctive relief was not only a desirable but a necessary tool of the federal courts for enforcement of the arbitration promises of labor agreements and that this type of injunction was excepted from the prohibitions of Norris-LaGuardia. *Id.* In *Gateway Coal, supra*, this Court concluded that, absent express language to the contrary, an agreement to arbitrate gives rise to a coterminous duty not to strike and that such an agreement is enforceable by means of an injunction. 414 U.S. at 377-78, 382, 387.

The subject decision of the Sixth Circuit threatens the vitality of this Court's prior decisions regarding the utilization of injunctive relief as a remedial measure generally and conflicts with prior decisions of this Court and the rationale of those of other Courts of Appeals [*Old Ben Coal, supra; Donovan Construction, supra; CF&I Steel, supra*] regarding its use specifically to protect and advance the contractual arbitration process as the substitute for industrial strife. The effect of the instant decision is to remove from a federal district court's remedial resources that scope of relief which is consistent with a party's past conduct of avoiding arbitration and attempting to inject the illegal pressure of a strike into the arbitration process and also necessary to insure fulfillment of promises to arbitrate. In constricting the prospective remedial aspects of injunctive relief, this decision forces an employee to repair to the federal court to obtain arbitration without the pressure of a strike *each time* a strike is substituted for arbitration as the method for resolving a different arbitrable dispute. Such a result fosters industrial strife and litigation rather than the utilization of the contractual arbitration process. It conflicts with the postulate of the decisions of this Court and those of other Courts of Appeals in this area.

B. The Decision of the Sixth Circuit is in Conflict With Decisions of This Court and Other Courts of Appeals in Failing to Properly Apply the Agency Principles Applicable to an Action Brought Under 29 U.S.C. § 185.

In excluding the application of ordinary agency principles properly pertinent to this action under 29 U.S.C. § 185 and imposing a significantly more restrictive test of union liability, the Sixth Circuit has rejected the plain language of § 185(e) as well as the determination of this Court, which is followed in other Circuits, as to the effect of that provision. *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966); *Eazor Express, Inc.* v. *Int'l. Bhd. of Teamsters*, 520 F. 2d 951 (3d Cir. 1975), *cert. denied*, 424 U.S. 935 (1976); *Wagner Elec. Corp.* v. *Local 1104, Int'l. Union of Electrical, Radio and Machine Workers*, 496 F. 2d 954 (8th Cir. 1974); *Vulcan Materials Co.* v. *United Steelworkers of America*, 430 F. 2d 446 (5th Cir. 1970), *cert. denied*, 401 U.S. 963 (1971).

This Court, in considering the standard by which the liability of a union is to be judged in an action to which § 185(e) applied, has determined that ordinary agency principles govern with respect to union accountability for the conduct of its members. *Gibbs, supra.* This has been followed by several Courts of Appeals, resulting in the finding of union liability for the action of its membership at a particular job site in striking in violation of an arbitration provision, for the earlier failure to have undertaken efforts reasonably calculated to prevent future strikes in defiance of an arbitration obligation, and for the failure to undertake efforts reasonably calculated to end a present strike. *E.g., Eazor Express, Inc., supra; Wagner Electric Corp., supra; Vulcan Materials Co., supra.*

The present decision of the Sixth Circuit expressly rejects the application of certain agency principles; and by relying on cases such as *North American Coal Corp.* v. *Local Union 2262, United Mine Workers*, 497 F. 2d 459 (6th Cir. 1974),

it incorrectly applies a more restrictive standard for determining union liability and permits the International and its District No. 6 to avoid accountability for the action of its membership in striking over arbitrable matters at the Company's three mines. The decision of the Sixth Circuit further fails to require either the International or the District to undertake *any* effort to prevent recurrences of strikes or to end strikes even though both had knowledge of a pattern or practice of breaches of the arbitration obligation and even though both had the power to prevent such breaches through exercise of its supervisory powers over its members.

The Sixth Circuit's decision, if left uncorrected by this Court, will grant the International and District the benefits of being the exclusive bargaining representatives without the obligation to insure that those for whom they bargain carry out the duties arising from the collective bargaining agreement. This decision, if uncorrected, can only have a deleterious effect on the bargaining relationship between management and a union by undermining the precepts advanced in this Court's decisions beginning with *Textile Workers Union* v. *Lincoln Mills, supra.* These principles recognize the coequal positions of the parties to a collective bargaining agreement and require that each party bear the obligations imposed on it by the collective bargaining relationship. Finally, this decision, if uncorrected, promotes a disregard of the realities of union activity recognized by Congress in § 185(e) and by the Courts in decisions such as *Gibbs.*

Thus, this aspect of the Sixth Circuit's decision is in opposition to the determinations of this Court and in conflict with the decisions of other Courts of Appeals who have considered the issue. It should, therefore, be reviewed and reversed.

C. The Decision of the Sixth Circuit Extends the Decision of This Court in Buffalo Forge Co. v. United Steelworkers of America, to a Substantively Different Factual and Legal Setting, Thereby Deciding an Important Question of Federal Law Which Has Not Been, But Should Be, Decided by This Court.

The Sixth Circuit's decision mechanistically applied this Court's decision in *Buffalo Forge Co.* v. *United Steelworkers of America,* 428 U.S. 397 (1976), to the significantly distinct circumstances of this case. In so doing, the Sixth Circuit decided an important question of federal law, by a sweeping extension of the scope of *Buffalo Forge* to strikes other than those in support of legal economic strikes and by unions having no substantive interest in the outcome of the generative disputes. That issue has not been, but should be, decided by this Court.

In its decision, the Sixth Circuit affirmed the District Court's determination that, on the basis of *Buffalo Forge Co.,* the previously issued preliminary injunctions could not be enforced against the striking members of the United Mine Workers employed at the Company's three mines, who had ceased work and refused to cross the picket lines of other members of the United Mine Workers employed at other mines – even though the picketing union members were then engaged in and seeking support for an illegal strike in defiance of the obligation to arbitrate embodied in the single collective bargaining agreement which covers both the picketers and the Company's employees. Such a simplistic application of *Buffalo Forge* overlooks the interests advanced in that decision which are defeated by its rote application to the facts of this case.

Buffalo Forge held improper an injunction against a strike in deference to a sister local union at the same job site which

was picketing the employer in support of its efforts to obtain a separate collective bargaining agreement of its own from the employer of both groups of workers. In that case, the underlying primary strike and picketing were found to be legal and protected activity. There was no issue, in the generative primary strike which could have been arbitrated. Thus, to refuse to enjoin the sympathy strike would not have a damaging effect on the arbitration process; and to enjoin the sympathy strike would seriously undercut the bargaining position of the primary collective bargaining strikers.

None of the factual or legal circumstances giving rise to the decision in *Buffalo Forge* are present in this case. The decision of the Sixth Circuit made new law which undercuts the arbitration process by countenancing a union's circumvention of its obligation to arbitrate and permitting the use of the strike process on a multi-employer basis in order to bring extra-contractual pressure to bear on the resolution of the primary dispute. The effective result of this decision is to judicially sanction the spread of an illegal strike and the anomalous situation where the initial strikers may be enjoined but the sympathy strikers may not.

The Sixth Circuit's decision failed to recognize the significant difference occasioned in situations such as this case by the presence of a single collective bargaining agreement, covering all workers in the industry. In the *Buffalo Forge* situation, the primary strikers have no underlying issue to submit to arbitration and, thus, refusing to enjoin the sympathy strike would have no adverse impact on the arbitration process. In this case, the issues prompting the illegal primary strike were capable of being arbitrated; also, under the single collective bargaining agreement governing picketers and sympathizers alike, settlement of the grievance in favor of the union could redound to the benefit of all union members no matter where employed.

Moreover, the Sixth Circuit's decision is contrary to this Court's decision in *Gateway Coal Co.* v. *United Mine Workers*,

supra, in failing to analytically compare the union's no-strike promise with its coterminous duty to arbitrate, and thereby failing to properly determine the permissible scope of injunctive relief in the context of the particular collective bargaining agreement in question. Rather than applying the *Gateway Coal* test of arbitrability (as refined from settled doctrine emanating from *Lincoln Mills* and the *Steelworkers Trilogy*), the Sixth Circuit borrowed its view of arbitrability from a dissenting opinion of Mr. Justice Black [*NLRB* v. *Rockaway News Co.*, 345 U.S. 71, 81 (1953)], in a case wherein this Court explicitly held that the right to refuse to cross a picket line can be bargained away. In holding that the question of the Company's employees' right to refuse to work in sympathy with other members of the United Mine Workers to be non-arbitrable, the Sixth Circuit repudiated the *Gateway Coal* criterion that the failure to exclude a dispute from arbitration affords a basis for concluding that the parties intended to arbitrate such a dispute. 414 U.S. at 377-78. That test of arbitrability has been reaffirmed most recently by this Court. *Nolde Bros., Inc.* v. *Local 358, Bakery & Confectionary Workers*, — U.S. —, 97 S.Ct. 1067, 1074 (1977). While the question of whether this right has been bargained away is for the arbitrator, the Sixth Circuit applied a standard, contrary to that approved by this Court, in concluding non-arbitrability of the issue and concomitant non-enjoinability of the defendants' strike activity in July and August, 1976.

The Sixth Circuit's decision, if left uncorrected, will have a debilitating effect on the doctrines contained in the decisions of this Court which promote the utilization of contractual arbitration processes in place of the industrial strife of unchecked strikes by unions in disregard of contractual obligations. The instant decision and its natural progeny provide a cloak of judicial immunity to persons who breach their own collective bargaining obligations in support of the disregard of the arbitration process by other union members whether such support is generated by a picket, a telephone call, a wink, or a nod. It will engender a resurrection of the use

of the weapons of collective bargaining for which the parties had contractually agreed to substitute the arbitration process to resolve labor disputes; and thus, it contravenes the federal labor policy, enunciated in the decisions of this Court, of fostering agreed upon arbitral processes in place of the weapon of the strike. Therefore, the Sixth Circuit's decision should be reviewed so that this Court can properly determine this critical aspect of federal labor law.

VII. CONCLUSION

The Sixth Circuit's decision in this case is contrary to decisions of this Court and those of other Courts of Appeals in regard to the scope of injunctive relief to remedy a determined pattern of illegal union conduct, the standards for adjudging union accountability for the actions of its members, and the availability of injunctive relief for violations of collecting bargaining agreements. The issues presented by this Petition are critical ones not only to this litigation and its future conduct but also to similar cases pending in other courts. It is respectfully submitted that the orderly development of the law in this area and the preservation of the heretofore developed federal labor policy of promotion of industrial peace require that the Sixth Circuit's departure therefrom be reviewed, that this Court's consideration of the issues presented not be deferred, and that a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A. APRIL 23, 1975

MEMORANDUM AND ORDER OF DISTRICT COURT

(Filed April 23, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 75-234

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs,

vs.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants.

MEMORANDUM AND ORDER

Plaintiffs, Ohio Power Company and its wholly owned subsidiary, Southern Ohio Coal Company (hereinafter "SOCCO") bring this action pursuant to Section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185 seeking monetary and injunctive relief for defendants' work stoppage which is allegedly in violation of the National Bituminous Coal Wage Agreement of 1974. Defendants are the United Mine Workers of America (hereinafter "UMWA"), its District No. 6 and three locals of the UMWA, Local No. 1890, Local No. 1886 and Local No. 1957. The three locals represent, for collective bargaining purposes, the production and maintenance employees at Meigs Mine No. 1, Meigs Mine No. 2 and Raccoon Mine No. 3, respectively. This matter is now before the

Court on plaintiffs' request for a preliminary injunction ordering the defendants:

1. To refrain from committing, doing, uttering, writing or communicating any act, word, or deed, written, spoken or performed, which is intended, designed, or calculated to induce, persuade, order, cause or bring about the failure or refusal of any member of defendants to report for work or to work or cause or bring about a continuation of the work stoppage at Meigs Mine No. 1, Meigs Mine No. 2, and Raccoon Mine No. 3;

2. To refrain from continuing or reinstituting the work stoppage now existing at Meigs Mine No. 1, Meigs Mine No. 2, and Raccoon Mine No. 3;

3. To refrain from picketing or in any manner interfering with anyone seeking ingress to or egress from Meigs Mine No. 1, Meigs Mine No. 2 and Raccoon Mine No. 3;

4. To utilize the grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1974 with respect to arbitrable grievances;

5. To take all action which may be necessary to assure compliance with the terms of the National Bituminous Coal Wage Agreement of 1974.

The Supreme Court in *Boys Market, Inc.* v. *Retail Clerks' Union Local 770*, 398 U.S. 235 (1970), held that a District Court, subject to the traditional principles of equity, has jurisdiction under § 301 to grant injunctive relief against a work stoppage on the part of a union if the collective bargaining agreement contains a mandatory arbitration procedure and the work stoppage is over a grievance or involves a matter which is subject to arbitration under the agreement. The Court stated:

> 'A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless

> and until it decides that the case is one in which an injunction would be appropriate despite the Norris-La-Guardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity – whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.' 370 U.S., at 228. (Emphasis in original.)

At a hearing held in this matter plaintiffs established that both parties are contractually bound by the National Bituminous Coal Wage Agreement of 1974. Article XXIII of this agreement requires the resolution of all disputes between the parties in accordance with its grievance and arbitration provisions. Further, plaintiffs established that the unions herein had failed to follow these procedures and had instead engaged in a work stoppage. Defendants, while conceding a work stoppage, contend that its members failed to cross picket lines set up by persons not employees of the mines in question for fear of violence. They further claim that none of the locals have any grievance or dispute with SOCCO. It is clear that plaintiffs are ready to arbitrate the question of the right of its employees to refuse to work because of the presence of pickets outside the mine gates or any other grievance the local unions might have which is prompting this work stoppage. It is equally clear that the unions have not initiated the grievance procedure nor have they taken any sanctions against their members in order to prohibit the work stoppages. The

testimony adduced regarding the unions' fear of unidentified persons picketing outside the mines is not sufficient in my opinion to warrant a breach of the bargaining contract. Regardless of the reasons for the work stoppages, the clear language of the collective bargaining agreement mandates that *all* disputes be resolved according to the machinery provided. Thus the work stoppage is in violation of the agreement, and, subject to traditional principles of equity, is within the *Boys Market* exception.

At the hearing held April 21, 1975, the Court was made aware of the fact that the unions had discontinued the work stoppages and had returned to work at all three mines at 12:01 a.m. April 21, 1975. Accordingly, the Court feels that the granting of an injunction herein would not be appropriate at this time. However, upon the showing, during the pendency of this action, that a similar work stoppage has been reinstituted and that irreparable harm will result, an Order for preliminary relief will issue forthwith.

/s/ ROBERT M. DUNCAN, Judge
United States District Court

APPENDIX B. JUNE 19, 1975

MEMORANDUM AND ORDER OF DISTRICT COURT

(Filed June 19, 1975)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 75-234

SOUTHERN OHIO COAL COMPANY,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants.

MEMORANDUM AND ORDER

On April 10, 1975,[1] plaintiffs, the Ohio Power Company and its wholly owned subsidiary, Southern Ohio Coal Company (hereinafter "SOCCO") brought this action pursuant to Section 301 of the Labor-Management Relations Act, as amended, 29 U.S.C. § 185, seeking monetary and injunctive relief for defendants' work stoppages which are allegedly in violation of the National Bituminous Coal Wage Agreement of 1974. Named as defendants were the United Mineworkers of America (hereinafter "UMWA"), its District No. 6, and

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[1] Unless otherwise specified all dates referred to are in 1975.

three locals of the UMWA, Local No. 1890, Local No. 1886, and Local No. 1957. Thereafter, a hearing was held on plaintiffs' motion for an order enjoining work stoppages then being engaged in by the three local unions. In declining to grant the injunction the Court found that plaintiffs had failed to present any proof that they were suffering irreparable harm. See the Memorandum and Order entered herein April 23, 1975. This matter is again before the Court on a motion by plaintiffs to enjoin temporarily further work stoppages. This motion is directed at Raccoon Mine No. 3, represented by Local No. 1957. Exhibits admitted in evidence at the first hearing was considered resubmitted for purposes of the second hearing.

Findings of Facts

SOCCO and the UMWA are both signatories to the National Bituminous Coal Wage agreement of 1974. Especially pertinent here is Article XXIII entitled "Settlement of Disputes." Section C of this Article provides as follows:

> Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

The section then goes on to describe a five-step procedure, culminating in arbitration, which was established for the purpose of resolving all disputes arising between the parties. Despite this binding arbitration provision, the evidence adduced at the hearing established that members of Local No. 1957 had engaged in work stoppages three (3) days in December; three (3) days in March, one (1) day in May; and one (1) day in June (as of the date of the hearing on June 11). The latter two stoppages, which were the immediate

cause for this hearing, are indicative of the actions engaged in by Local 1957.

The work stoppage of May 28 was occasioned by a dispute over the capability of a supervisor, John Allen. Mr. Don Brown, superintendent of Raccoon No. 3, testified that union members approached him on May 20, concerning the problem of a personality conflict between Mr. Allen and the ten-man crew working under him. He further testified that after talking with the union members, he agreed to make Mr. Allen a fireboss[2] for what he described as a "cooling off" period, during which time he would bring Allen and his crew together to discuss the problem. Mr. Cleland, the Chairman of the Safety Committee for Local No. 1957, testified that the dispute between Allen and his men also concerned their feeling that Allen did not take necessary safety precautions. He confirmed that it was agreed with Mr. Brown that Allen would be made a fireboss. No further problems arose with regard to Mr. Allen until May 27 when he was put in charge of three miners not in his original ten-man crew for the purpose of setting timbers to shore up some weak spots in the mine. Mr. Thomas, the shift foreman for Raccoon No. 3, who made the timber setting assignments, testified that he was under the impression Allen was prohibited from supervising only his original crew until the personality conflict between Allen and the men had been resolved. He also testified that because of the inexperience of the three miners assigned to the timber setting job, it was necessary to have an experienced miner in charge. According to Mr. Thomas, Allen was the only foreman available at that time, the others being off sick. Allen therefore was assigned as a supervisor for that one assignment and then returned to his job as a fireboss. Although no complaints were made by the union during the May 27th assignment, the miners did not report for work on May 28. The local union seeks to justify this action on the part of its members by

[2] A fireboss is one who checks for pockets of gas and other dangerous conditions which affect the safety of men working in a mine.

alleging that the company had itself violated the terms of the collective bargaining agreement. It contends that it had presented a grievance to Mr. Brown which grievance had been resolved by the agreement to suspend temporarily Mr. Allen as a supervisor. When the company subsequently put him in charge of three miners, defendant argues, it contravened the grievance resolution and gave the union the right to engage in a work stoppage.

The work stoppage of June 2 was occasioned by the local union's discontent over several incidents of shortages in various individual miners' pay checks. According to the testimony, the company's computerized pay system occasionally failed to be current on the job assignment and pay rate of a miner, resulting in his receiving a smaller pay check than he actually deserved. It was uncontroverted at the hearing that the company always paid the miner the difference when the pay shortage was brought to its attention. Rather than file a grievance over this matter, the union members did not report for work on June 2.

As noted above, the work stoppages were only the last in a series of stoppages over the past seven months since the collective bargaining agreement became effective on December 6, 1974. Each time, the miners have not filed a grievance but instead have simply caused the mine to be closed for a 24-hour period. Mr. William Hilton, general superintendent of mines for SOCCO, testified that when the mine is closed for a day approximately 2,000 tons of clean[3] coal production is lost and SOCCO is unable to meet its contractual commitments. Further, daily maintenance of the mine is lost, thereby occasioning some deterioration in the overall condition of Raccoon No. 3. Mr. Hilton also testified that the work force at Raccoon is a relatively inexperienced one, averaging less than one year of coal mining experience. The training of routine work and safety habits within the

[3] "Clean" coal is mined coal after it has been processed to separate rocks, dirt and other debris from it.

mine is continually being broken by the work stoppages, thereby affecting the efficiency of the miners and the mining operation. He stated he had sent telegrams to the representatives of UMWA, its District No. 6 and the local union requesting them to use their best efforts to return the men to work. Mr. Porter, the president of Local No. 1957, testified that he always contacts the District representative when his men do not report for work. Although Mr. Porter testified that a representative of the International Union keeps in close contact generally, he stated that he gave no notice of his union's walk-outs to the International representative. On the basis of these facts plaintiffs have sought to prove a series of work stoppages which amount to a pattern of union activity in contravention of the collective bargaining agreement and which has caused and will continue to cause irreparable harm to plaintiffs. They contend that in addition to the local union's direct involvement in the work stoppages, the UMWA and District No. 6 are also responsible for the stoppages because they failed to take any disciplinary action against Local No. 1957; they, therefore, condoned and supported the illegal stoppages.

Discussion

The beginning point for any consideration of injunctive relief in a case such as this is the Supreme Court's decision in *Boys Market, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970). There the Court delineated the standards for invoking this Court's equitable powers in an action such as this. It stated:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both are contractually bound to arbitrate, the District Court may issue no

> injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. (Emphasis in original.)

Boys Market, Inc. v. *Retail Clerks' Union Local 770, supra* at 228.

The defendants do not seriously contend, nor could they, that they are not contractually bound to arbitrate the grievances involved herein. Nor is there any dispute that the Coal Company has been and continues to be ready and willing to resolve the problems with the miners through the grievance procedure. Finally, this Court believes that the traditional principles of equity dictate that the request for preliminary relief be granted. SOCCO has amply demonstrated a pattern of activity by the local union which does in fact reflect disregard of the contractual provisions of the National Bituminous Coal Wage Agreement and which further shows a probability that the Local No. 1957 will continue such temporary walk-outs whenever they again become dissatisfied over some condition of work at the mine. The Court is not persuaded that Local No. 1957 was justified in staging the May 28th stoppage because the Company had violated a resolved grievance agreement. This Court will not determine whether the misunderstanding constituted a violation of the collective bargaining agreement. This is the very type of matter which the parties have bound themselves to resolve through the grievance procedure and thus is the very type of fact-finding a court should refuse to engage in.

The Court is persuaded that the plaintiffs are suffering irreparable harm by the disruptive work stoppages. The nature of some of the injuries suffered by plaintiffs are such that damages would be speculative and monetary relief would not serve to coompensate them adequately. Finally, in weighing the equities between the parties the Court feels that plaintiffs would suffer more from denial of relief than would the union from its granting. The primary benefit derived by SOCCO from the collective bargaining agreement is a stable work force, and this is lost when the union resorts to repetitious work stoppages. On the other hand, the local union is only being required to do what it has already contractually bound itself to do. The Court finds under these circumstances that injunctive relief is warranted against Local No. 1957. The Court, however, finds that this is not so with regard to UMWA and District No. 6. There is no evidence that the International Union had notice of these stoppages or in any way encouraged or condoned them. Thus, there was nothing which would or could trigger UMWA's disciplinary powers against Local No. 1957's activities. Although District No. 6 did receive notice, the Court contends that notice alone is not sufficient. There is no evidence that the District instigated, condoned or otherwise encouraged the work stoppages or that it had any methods or procedures by which it could discipline Local No. 1957 and thereby prevent the stoppages.

For the reasons set forth above, Local No. 1957, its officers, agents, members, employees and others associated with or acting in concert with such defendant is ordered hereby:

> To refrain from engaging in any further work stoppage at Raccoon No. 3;
>
> To refrain from committing, doing, uttering, writing, or communicating, any word, act, or deed, written, spoken or performed which is intended, designed or calculated to induce, persuade, order, cause or bring about the failure or refusal of any member of the defendant to report for work or to work at Raccoon No. 3;

To utilize the grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1974; with respect to arbitrable grievances; and

To take all action which may be necessary to assure compliance with the terms of the National Bituminous Coal Wage Agreement of 1974.

Plaintiffs shall, pursuant to Rule 65, F. R. Civ. P., file a bond of One Thousand Dollars ($1,000.00).

/s/ ROBERT M. DUNCAN, Judge
United States District Court

APPENDIX C. AUGUST 14, 1975

ORDER OF DISTRICT COURT

(Filed August 14, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOUTHERN OHIO COAL COMPANY,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants.

Civil No. C-2-75-234

ORDER

This matter is before the Court on the motion by plaintiff for a preliminary injunction directed against defendants. Such preliminary injunction seeks to enjoin defendants from participating in unauthorized work stoppages.

This matter was presented to the Court by oral argument by both sides, by offers of proof by plaintiff, and by the offer to present evidence from available witnesses by both sides.

It was stipulated in open court that the defendants, members of Local Union 1886, United Mine Workers of America, commenced an unauthorized work stoppage at 12:01 a.m. on July 28, 1975 and terminated such unauthorized work stoppage at 12:01 a.m. on August 11, 1975.

In view of the foregoing it is the opinion of this Court that a preliminary injunction prospective in effect cannot issue in the absence of a pending arbitrable unauthorized work stoppage. According, plaintiff's motion for a preliminary injunction is hereby DENIED.

It is so ODRERED.

/s/ CARL B. RUBIN
United States District Judge

APPENDIX D. SEPTEMBER 9, 1975

MEMORANDUM AND ORDER OF DISTRICT COURT

(Filed September 9, 1975)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants.

Civil No. C-2-75-234

MEMORANDUM AND ORDER

On April 10, 1975,[1] plaintiffs, the Ohio Power Company and its wholly owned subsidiary, Southern Ohio Coal Company (hereinafter "SOCCO"), brought this action pursuant to Section 301 of the Labor-Management Relations Act, as amended, 29 U.S.C. § 185, seeking monetary and injunctive relief for defendants' work stoppages which are allegedly in violation of the National Bituminous Coal Wage Agreement of 1974. Named as defendants were the United Mine Workers of America (hereinafter "UMWA"), its District No. 6, and three locals of the UMWA, Local No. 1890, Local No. 1886, and Local No. 1957. Thereafter, a hearing was held on plaintiffs' motion for an

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[1] Unless otherwise specified, all dates referred to are in 1975.

order enjoining work stoppages over contractually arbitrable matters at Meigs Mine No. 1, Meigs Mine No. 2, and Raccoon Mine No. 3. In declining to grant the injunction, the Court found that issuance of the preliminary injunction was not appropriate at that time after having been informed of the discontinuance of the work stoppages which existed at the time of the institution of the action. The Court stated further that upon demonstration of a recurrence of a similar work stoppage and proof of irreparable injury it would give further consideration to the granting of a preliminary injunction. See the Memorandum and Order entered herein April 23, 1975. Following this Order, plaintiffs, on May, 29, 1975, filed a motion requesting an Order enjoining work stoppages then being engaged in by defendants UMWA, its District No. 6, and one of its local unions, Local No. 1957. After a hearing on this motion, the Court granted the injunction as to Local No. 1957, but declined to enjoin UMWA, or its District No. 6. See, Memorandum and Order entered herein June 19, 1975. This matter is again before the Court on a motion by plaintiffs to enjoin temporarily further work stoppages. This motion is directed at defendants UMWA, its District No. 6, and its local union, Local No. 1890 and Local No. 1886. Exhibits admitted in evidence at the first and second hearing were considered resubmitted for purposes of the third hearing.

Findings of Facts

SOCCO and the UMWA are both signatories to the National Bituminous Coal Wage Agreement of 1974. Especially pertinent here is Article XXIII entitled "Settlement of Disputes." Section C of this Article provides as follows:

> Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

The section then goes on to describe a five-step procedure, culminating in arbitration, which was established for the purpose of resolving all disputes arising between the parties. Despite this binding arbitration provision, the evidence adduced at the hearing established that: members of Local No. 1890 had engaged in work stoppages for nine (9) work shifts[2] in December, 1974, eight (8) work shifts in January, three (3) work shifts in February, five (5) work shifts in March, nineteen (19) work shifts in April, and all work shifts since the commencement of the present work stoppage on August 19; members of Local 1886 engaged in work stoppages for two (2) work shifts in December, 1974, one (1) work shift in January, one (1) work shift in February, eleven (11) work shifts in March, seven (7) work shifts in April, one (1) work shift in June, thirty (30) work shifts beginning July 28 and ending August 11, and all work shifts since the commencement of the present work stoppage on August 21; members of Local 1957 engaged in work stoppages for eight (8) work shifts in December, 1974, seven (7) work shifts in March, nine (9) work shifts in April, three (3) work shifts in May, three (3) work shifts in June, and all work shifts since the commencement of the present work stoppage on August 19. The latter stoppages, which were the immediate cause for this hearing, are indicative of the actions engaged in by the three local unions.

The work stoppages were occasioned primarily by a dispute over the issuance of copies of a document entitled "Guidelines for Dealing with Mine Health and Safety Committee" by SOCCO to its supervisory personnel. Testimony was also presented showing that officers of Local 1957 claimed that the presence of stranger pickets on the evening of August 18 was a contributing factor in the work stoppages and that the appearance of masked pickets at Mine No. 2 and the shooting

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[2] Meigs Mine No. 1, Meigs Mine No. 2, and Raccoon Mine No. 3 have three scheduled work shifts per working day and five working days per week.

of a member of Local 1886 as he left the mine property on September 1, after completing a safety inspection of the mine, was a contributing factor to the continuation of the work stoppages. No grievance was filed regarding any of the issues involved in the work stoppages prior to the time the work stoppages began.

As noted above, the work stoppages were only the last in a series of stoppages over the past nine months since the collective bargaining agreement became effective on December 6, 1974. Each time, the miners have not filed a grievance but instead have simply caused the mine to be closed for a period of time. Mr. William Hylton, general superintendent of mines for SOCCO, testified that when Meigs Mine No. 1 alone is closed for a day approximately 2,000 tons of clean[3] coal production is lost; when Meigs Mine No. 2 alone is closed for a day approximately 5,000 tons of clean coal production is lost; and when Raccoon Mine No. 3 alone is closed for a day approximately 2,000 tons of clean coal production is lost. The closing of any one or more of the mines also makes it impossible for SOCCO to meet its contractual commitments. Further, daily maintenance of the mine is lost, thereby occasioning deterioration in the overall condition of each mine. Mr. Hylton alto testified that the work force at each mine is a relatively inexperienced one, averaging less than one year of coal mining experience. The training of routine work and safety habits within the mine is continually being broken by the work stoppages, thereby affecting the efficiency of the miners and the mining operation. He stated he had sent telegrams to the representatives of UMWA, its District No. 6 and the local unions requesting them to use their best efforts to return the men to work.

Mr. Paul Williams, superintendent of Meigs Mine No. 1, testified that during Local 1890's work stoppage in January,

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3 "Clean" coal is mined coal after it has been processed to separate rocks, dirt and other debris from it.

Mr. Donald Nunley, District 6 Executive Board member, discussed the work stoppage with him at the Mine complex.

Mr. James Stump, superintendent of Meigs Mine No. 2, testified that during the present work stoppage which commenced at Mine No. 2 on August 21, Mr. Nunley was again present and discussed the work stoppages and that Mr. Nunley attempted to have the dispute over the "Guidelines" resolved prior to the men returning to work. Mr. Stump further testified that Mr. David Shreve, District 6 safety coordinator, was present at the Meigs Mine complex during the present work stoppages and stated that no grievance would be filed over the "Guidelines" and that the issue would have to be settled in the courts.

Mr. Stump further testified that Mr. Karl Kafton, International Executive Board member, was present at the mine complex during work stoppages in March and July-August, and that Mr. Nunley and Mr. Kelly Martin, District 6 Executive Board member, were present at the mine complex during work stoppages in July. Mr. Stump also testified that he had sent telegrams during the July-August work stoppage to Arnold Miller, President of UMWA, Mr. Kafton, Mr. John Guzek, President, District 6, and Mr. Gene Oiler, President, Local 1886.

Mr. Don Brown, superintendent of Raccoon Mine No. 3, stated that during the present work stoppage, Mr. Nunley and Mr. Louis Newkirk, District 6 safety coordinator, were present at the Meigs Mine complex for a meeting during the most recent stoppages.

A copy of the UMWA constitution was admitted into evidence. This document establishes the International as the "supreme legislative, executive, and judicial authority" over all union members, Article III, § 2, and proscribes the violation of collective bargaining agreements, Article XII, §§ 5-8, with power to enforce this constitutional obligation being given to each union member, Article XV, § 1. District or local union autonomy may be suspended, *inter alia*, to assure performance or enforcement of a collective bargaining agreement,

Article XVIII, § 1, and proceedings to impose such a sanction may be initiated by any member. Article XVIII, § 2. And the International President may take control of a recalcitrant district or local. Article XVIII, § 7.

On the basis of these facts, plaintiffs have sought to prove a series of work stoppages which amount to a pattern of union activity in contravention of the collective bargaining agreement and which has caused and will continue to cause irreparable harm to plaintiffs. They contend that in addition to the local union's direct involvement in the work stoppages, the UMWA and District No. 6 are also responsible for the stoppages because they had notice of the work stoppages and failed to take any disciplinary action against their members; they, therefore, condoned and supported the work stoppages.

Discussion

The beginning point for any consideration of injunctive relief in a case such as this is the Supreme Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970). There the Court delineated the standards for invoking this Court's equitable powers in an action such as this. It stated:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity — whether breaches are occurring and will continue, or have been threatened and will be committed; whether

> they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. (Emphasis in original.)

Boys Markets, Inc. v. *Retail Clerks Union Local 770*, *supra* at 228.

The defendants do not seriously contend, nor could they, that they are not contractually bound to arbitrate the grievances involving the "Guidelines." Nor is there any dispute that the Coal Company has been and continues to be ready and willing to resolve the problems with the miners through the grievance procedure under the terms of the National Bituminous Coal Wage Agreement of 1974. Finally, this Court believes that the traditional principles of equity dictate that the request for preliminary relief be granted. SOCCO has amply demonstrated a pattern of activity by the local union which does, in fact, reflect disregard of the contractual provisions of the National Bituminous Coal Wage Agreement and which further shows a probability that the local unions will continue such work stoppages whenever they again become dissatisfied over some condition of work at the mine. The Court is not persuaded that the local unions were justified in staging the present work stoppage because of the defendants' claim that the Company had violated the Wage Agreement or because strangers were picketing the mine site. This is the very type of matter which the parties have bound themselves to resolve through the grievance procedure and, thus, is the very type of fact-finding a court should refuse to engage in. The Court does feel, however, that the members of the local unions were justified in refusing to cross a picket line composed of masked pickets and were justified in refusing to work for the three days following the shooting of a local union member by a masked picket at the Meigs No. 2 mine site.

The Court is persuaded that the plaintiffs are suffering irreparable harm by the disruptive work stoppages. The nature of some of the injuries suffered by plaintiffs are such that dam-

ages would be speculative and monetary relief would not serve to compensate them adequately. Finally, in weighing the equities between the parties the Court feels that plaintiffs would suffer more from denial of relief than would the union from its granting. The primary benefit derived by SOCCO from the collective bargaining agreement is a stable work force, and this is lost when the union resorts to repetitious work stoppages. On the other hand, the local union is only being required to do what it has already contractually bound itself to do. The Court finds, under these circumstances, that injunctive relief is warranted against Local No. 1890 and Local No. 1886. The Court, however, finds that this is not so with regard to UMWA and District No. 6. While there is evidence that the International had notice of the present and earlier work stoppages, there is no evidence that the International Union instigated or provoked the work stoppages. Further, while there is evidence that the District, through its officers, were aware of the present and earlier work stoppages, there is no evidence that the District instigated or provoked the current work stoppages.

For the reasons set forth above: (1) Local No. 1890, its officers, agents, members, employees and others associated with or acting in concert with such defendants are ordered hereby:

To refrain from engaging in any further work stoppages at Meigs Mine No. 1;

To refrain from committing, doing, uttering, writing, or communicating, any word, act, or deed, written, spoken or performed which is intended, designed or calculated to induce, persuade, order, cause or bring about the failure or refusal of any member of the defendants to report for work or to work at Meigs Mine No. 1;

To utilize the grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1974, with respect to arbitrable grievances; and

To take all action which may be necessary to assure compliance with the terms of the National Bituminous Coal Wage Agreement of 1974.

(2) Local No. 1886, its officers, agents, members, employees and others associated with or acting in concert with such defendants are ordered hereby:

To refrain from engaging in any further work stoppages at Meigs Mine No. 2;

To refrain from committing, doing, uttering, writing, or communicating, any word, act, or deed, written, spoken or performed which is intended, designed or calculated to induce, persuade, order, cause or bring about the failure or refusal of any member of the defendants to report for work or to work at Meigs Mine No. 2;

To utilize the grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1974, with respect to arbitrable grievances; and

To take all action which may be necessary to assure compliance with the terms of the National Bituminous Coal Wage Agreement of 1974.

Plaintiffs shall, pursuant to Rule 65, F. R. Civ. P., file a bond of One Thousand Dollars ($1,000.00).

/s/ ROBERT M. DUNCAN, Judge
United States District Court

APPENDIX E. AUGUST 4, 1976

ORDER OF DISTRICT COURT

(Filed August 4, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOUTHERN OHIO COAL COMPANY,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants.

Civil Action No. 75-234

ORDER

Plaintiffs Ohio Power Company and Southern Ohio Coal Company move the Court to order the defendant Locals 1886, 1890 and 1957 of the United Mine Workers of America, and their officers and members, to appear before this Court and show cause why they should not be held in contempt of the preliminary injunctive decrees issued in this case on June 19, 1975 (as to Local 1957) and September 9, 1975 (as to Locals 1890 and 1886). These decrees, entered after hearings, enjoined defendants from engaging in further work stoppages at their respective mines. Plaintiffs have submitted affidavits indicating that the members of the defendant locals have not reported regularly for work since on or about July 23, 1976. In their August 2, 1976 brief, at pages 4 and 5, plaintiffs indicate that a United Mine Workers of America Local in Kanawha County, West Virginia, has been engaged in an illegal work stoppage since on or about June 22, 1976, and that

> The strike has subsequently spread through the coal mining states of the eastern half of the country virtually paralyzing the coal industry. Defendants have joined in this strike, either in support of the West Virginia strikers . . . or in respect of their picket lines . . . , though on numerous occasions there have been no pickets at SOCCO'S mine sites and yet no union employees have worked. . . .

Whether the present work stoppage at plaintiffs' mines is termed a "sympathy strike" or simply a work stoppage in deference to the picket lines of sister unions, this Court, upon a review of the briefs submitted by the parties on this issue, is of the opinion the July 6, 1976 decision of the Supreme Court of the United States in *Buffalo Forge Co.* v. *United Steelworkers of Amerinca, AFL-CIO*, ——, U.S. ——, 44 U.S.L.W. 5346 (1976), is controlling. In that case, the Court held that a federal district court may not enjoin a sympathy strike pending an arbitrator's decision as to whether such a strike is prohibited by the applicable collective bargaining agreement. In the present case, as in *Buffalo Forge*, there appears to be no arbitrable grievance underlying the work stoppage. The only issue which the employer wishes to be submitted to an arbitrator concerns the legality per se under the contract of a sympathy strike. As the Supreme Court noted in *Buffalo Forge*, 44 U.S.L.W. at 5350 n. 10, absent a strike over an arbitrable grievance-type dispute, federal courts may not "enjoin a strike solely because it is claimed to be in breach of contract and because this claim is itself arbitrable."

Accordingly, *Buffalo Forge* casts a shadow upon the breadth of the injunctions issued June 19 and September 9, 1975, and at a minimum requires under the present circumstances the denial of plaintiffs' motions for orders to show cause.

Motions denied.

/s/ ROBERT M. DUNCAN
United States District Judge

APPENDIX F. FEBRUARY 11, 1977

OPINION OF COURT OF APPEALS

(Filed February 11, 1977)

Nos. 75-2392, 75-2393, 75-2394, 75-2395, 75-2396, 76-2031

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellees,
v.
UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,
LOCAL UNION NO, 1957, ETC.,
Defendant-Appellant,

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,
v.
UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants-Appellees.

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,
v.
UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,
LOCAL UNION NO. 1890, ET AL.,
Defendants-Appellees.

APPEAL from the United States District Court for the Southern District of Ohio, Eastern Division.

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,
v.
UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants-Appellees.

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellees,
v.
UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,
LOCAL UNION NO, 1890, ET AL.,
Defendants-Appellants.

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,
v.
UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,
LOCAL UNION NO. 1890, ET AL.,
Defendants-Appellees.

Decided and Filed February 11, 1977.

Before: PHILLIPS, Chief Circuit Judge, and WEICK, and CELEBREZZE, Circuit Judges.

CELEBREZZE, Circuit Judge. This case arose from a series of work stoppages at three coal mines owned by the Ohio Power Company and operated by the Southern Ohio Coal Company[1] – Meigs No. 1, Meigs No. 2 and Raccoon No. 3. The miners employed at these mines are members of Locals 1890, 1886, and 1957 of the United Mine Workers of America. The Southern Ohio Coal Company and the United Mine Workers are signatories of the Nationoal Bituminous Coal Wage Agreement of 1974. On April 14, 1975, the Company filed an amended complaint in the Southern District of Ohio seeking injunctive relief and damages for breach of the mandatory arbitration provision in the collective bargaining agreement.[2] Jurisdiction was based on § 301(a) of the National Labor Management Relations Act, 29 U.S.C. § 185(a) (1970). Named as defendants were Locals 1890, 1886 and 1957, District No. 6 and the United Mine Workers of America. The amended complaint alleged that the members of the unions were engaged in a continuing practice of striking over arbitrable grievances in violation of the no-strike pledge implied from the mandatory arbitration clause. The complaint also alleged that the strikes had been condoned and encouraged by District No. 6 and the United Mine Workers of America.

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[1] For the sake of clarity, we will refer to Appellants throughout the opinion as "The Company."

[2] Article XXIII, § (c) of the National Bituminous Coal Wage Agreement of 1974 provides as follows:

> Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

The section goes on to describe a five-step procedure, culminating in arbitration, established for the purpose of resolving all disputes arising between the parties.

The District Court denied the initial motions for preliminary injunctions because the particular work stoppage had ceased, but the Court warned defendants that future work stoppages during the pendency of the action could result in injunctive relief for the employer. On May 28th, the employees at Raccoon No. 3, who are members of Local No. 1957, failed to report for work. The work stoppage was occasioned by the assignment of a supervisor to whom the miners objected. On June 2d, the members of Local No. 1957 again failed to report for work. This time the strike was set off by a computer error that shortchanged a number of miners' pay checks. On June 19th, the District Court granted a preliminary injunction against Local 1957 but refused to extend the order to the district and international unions. The Court found that the May 28th and June 2d work stoppages resulted from disputes over arbitrable grievances and thus violated the union's no-strike obligation. The Court also found that these work stoppages were only the latest of a series of strikes over arbitrable disputes where the miners failed to file grievances but simply close the mine for a short period. The Court noted that the Company was ready and willing to arbitrate the grievances. Finally, the Court concluded that the injunction was warranted by ordinary principles of equity because the Company was suffering irreparable injury from the repetitious work stoppages and would suffer more from the denial of the injunction than would the union from its granting. The District Court ordered Local 1957:

> To refrain from engaging in any further work stoppage at Raccoon No. 3;
>
> To refrain from committing, doing, uttering, writing, or communicating, any word, act, or deed, written, spoken or performed which is intended, designed or calculated to induce, persuade, order, cause or bring about the failure or refusal of any member of the defendant to report for work or to work at Raccoon No. 3;

To utilize the grievance and arbitration procedures of the National Bituminous Coal Wage, Agreement of 1974, with respect to arbitrable grievances; and

To take all action which may be necessary to assure compliance with the terms of the National Bituminous Coal Wage Agreement of 1974.

On August 19, 1975, mine workers at all three mines failed to report for their shifts. As a result the Company sought preliminary injunctions against Locals 1886 and 1890, District No. 6 and the UMW International.[3] The Court found that these work stoppages were primarily attributable to the Company's distribution of a document entitled "Guidelines for Dealing with Mine Health and Saefty Committee" to its supervisory personnel. The Court also indicated that the presence of stranger pickets at the mine sites and the shooting of a member of Local 1886 contributed to the August 18th work stoppage. As before, the Court noted that no grievances had been filed over the incidents and found that the work stoppages were over arbitrable issues and thus in violation of the implied no-strike agreement. The Court stated that the Company had "amply demonstrated a pattern of activity by the local union which does, in fact, reflect disregard of the contractual provisions of the National Bituminous Coal Wage Agreement and which further shows a probability that the local unions will continue such work stoppages whenever they again become dissatisfied over some conditions of work at the mine." Concluding that the equities supported issuance of preliminary injunctions against Locals 1886 and 1890, the District Court entered orders identical to the decree imposed on Local 1957. Once again, however, the Court refused to enjoin the district and international unions.

[3] Although work had also ceased at Racoon No. 3, Local 1957 was not made a party to the proceedings, presumably because of the injunction already in effect. Nor did the Company seek to have Local 1957 cited for contempt of the June 19th decree.

In late July of 1976, the mines were again closed. This time the shut down was caused by the miners' refusal to cross stranger picketlines set up at the mine sites by unidentified pickets. The Company viewed the miners' refusal to cross the picketlines as a violation of the outstanding injunctions, and motioned the Court for orders to show cause why the local unions should not be held in contempt. The District Court denied the motions feeling itself bound by the decision of the Supreme Court in *Buffalo Forge Co.* v. *United Steelworkers of America*, 44 U.S.L.W. 5346 (July 6, 1976), which had been decided in the interim since the injunctions were issued. The District Court reasoned that the miners' refusal to cross was protected activity and not subject to injunction. The Court concluded the order denying the motions with the statement that "*Buffalo Forge* casts a shadow upon the breadth of the injunctions issued June 19th and September 9, 1975, and at a minimum requires under the present circumstances the denial of Plaintiffs' motions for orders to show cause." The Company appeals from the Court's refusal to enjoin the district and international unions and from the denial of the motions for orders to show cause. The local unions challenge the issuance of the preliminary injunctions and contend, *inter alia*, that the orders are vague and overbroad.

A logical starting point for review of injunctions restraining work stoppages growing out of a labor dispute is the Supreme Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970). In *Boys Markets* the Supreme Court overruled its previous decision in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), and held that, despite the prohibitory language of § 4(a) of the Norris-LaGuardia Act,[4] federal courts in the exercise of § 301 juris-

[4]

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to pro-

diction had the power to issue injunctions to restrain strikes over arbitrable disputes in violation of express or implied no-strike agreements. The *Boys Markets* Court adopted the standards suggested in the *Sinclair* dissenting opinion for the exercise of a court's equitable powers to enjoin a strike:

> "A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity – whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance." 370 U. S., at 228. (Emphasis in original.)

398 U.S. at 254, *quoting Sinclair Refining Co.* v. *Atkinson*, 370 U.S. at 228 (Brennan, J., dissenting).

The unions claim that the preliminary injunctions were invalidly issued because the District Court failed to follow the *Boys Markets* formula. Specifically, they argue that the

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hibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

29 U.S.C. § 104 (1970).

work stoppages were caused by non-arbitrable disputes and that the District Court did not properly weigh the equities between the parties.[5] After reviewing the record, we affirm the findings of the District Court that the work stoppages which led to the preliminary injunctions centered around issues that the unions were contractually bound to arbitrate under the Bituminous Coal Wage Agreement of 1974. Nor can we conclude that the District Court abused its discretion in balancing the equities between the parties. The record does not support the locals' allegations of "bad faith" and "unclean hands" on the part of the Company. The District Court properly applied the *Boys Markets* guidelines and concluded that principles of equity supported issuance of the injunctions.

We also must reject the Company's contention that the District Court erred in refusing to extend the injunctions to District No. 6 and the UMW International. The District Court conceded that the District and International had notice of the work stoppages on August 13, 1975, and of earlier work stoppages, but held that mere notice was not sufficient to justify extending the injunctions to those parties. The Court found that neither the District or the International had instigated or provoked the current work stoppages. These findings are not clearly erroneous. The Company argues that this Court should follow ordinary principles of agency law and hold the District and International liable for the "mass action" of their members and for failing to use all "reasonable means" at their disposal to end the unauthorized strikes. While these agency theories have been met with favor by some courts, *see e.g.*, *Eazor Express, Inc.* v. *Intern'l Brotherhood of Teamsters*, 520 F. 2d 951 (3rd Cir. 1975), they have not been well received by this Court. As we recently reaffirmed in *Peabody Coal Co.* v. *Local Unions*, 543 F. 2d 10, 12 (6th Cir. 1976),

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[5] For discussion of the unions' allegation that the Court's failure to order the Company to arbitrate requires vacation of the injunctions see text at 28 *infra*.

there is no authority in this circuit for the proposition that a union may be held responsible for the "mass action" of its members in staging an unauthorized strike or for failure to use its "best efforts" in curtailing one. On the contrary, this Court has repeatedly held that a union may only be held responsible for the authorized or ratified actions of its officers and agents. *See e.g., North American Coal Corp.* v. *Local 2262, UMW*, 497 F. 2d 459, 466-67 (6th Cir. 1974). There may be occasions where a union's studied ambivalence toward an unauthorized strike may constitute sufficient inducement, encouragement and condonation of the strike to expose the union to injunctive relief and damages, *see Riverton Coal Co.* v. *United Mine Workers of America*, 453 F. 2d 1035, 1042 (6th Cir. 1972), this generally arises where there are facts on record to suggest that the union was allowing the wildcat strike to continue to bring pressure to bear on the employer and reap the benefits of the illegal work stoppage without outwardly violating its contractual commitments. Since the record does not disclose that the District and International encouraged, condoned or induced the strikes, either through action or inaction, those parties were properly excluded from the preliminary injunctions.

The Company claims that the District Court erred in declining to order the local unions to show cause why they should not be held in contempt for refusing to cross the stranger picketlines set up at the mine sites. Relying on the Supreme Court's decision in *Buffalo Forge Co.* v. *United Steelworkers of America, AFL-CIO*, 44 U.S.L.W. 5346 (July 6, 1976), the District Court concluded that the locals' refusal to cross the picket lines was not enjoinable and therefore could not be the basis for contempt citations. Because we agree with the District Court that the matter is controlled by *Buffalo Forge*, we find no error in the denial of the motions for orders to show cause.

In *Buffalo Forge* the employer's plants were struck by "office clerical-technical" (O & T) employees who were in

the midst of collective bargaining negotiations. The production and maintenance (P & M) employees at the struck plants refused to cross the O & T picketlines. Both groups of employees were represented by the United Steelworkers of America. The P & M employees were working under contracts which provided for the arbitration of grievances, including disputes over the interpretation and application of the contract. The contracts also contained express no-strike clauses. The employer brought a § 301(a) action against the United Steelworkers and the locals representing the P & M employees alleging that the P & M work stoppage violated the no-strike agreement and that the question of whether the no-strike clauses had been violated was arbitrable under contractual procedures for settling disputes over the interpretation and application of each contract. The District Court denied injunctive relief, and the Second Circuit affirmed, holding that the P & M employees were engaged in a "sympathy strike" which was outside the narrow exception to the Norris-LaGuardia Act recognized in *Boys Markets*. The Supreme Court agreed with the result reached by the lower courts and held that it would be improper to enjoin the P & M employees' strike pending the arbitrator's decision on the scope of the no-strike clauses in the contracts. 44 U.S.L.W. 5346. The Court distinguished a sympathy strike from the typical *Boys Market* situation because refusal to cross another's picketline is not precipitated by an underlying dispute which the parties have agreed to submit to arbitration:

> *Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the em-

> ployer and respondents. The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain. Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case. 44 U.S.L.W. at 5349-50.

Conceding that the issue of whether the sympathy strike violated the no-strike clause was arbitrable, the majority resisted the suggestion that district courts were empowered to enjoin alleged breaches of no-strike agreements despite the express prohibition of § 4(a) of the Norris-LaGuardia Act. The majority expressed the fear that acceptance of the employer's argument would involve federal courts in a wide range of arbitrable disputes and allow the judiciary to usurp the role of the arbitrator and interfere with the private contractual relationship of the parties:

> If an injunction could issue against the strike in this case, so in proper circumstances could a court enjoin any other alleged breach of contract pending the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of § 104. The court in such cases would be permitted, if the dispute was arbitrable, to hold hearings, make findings of fact, interpret the applicable provisions of the contract and issue injunctions so as to restore the status quo *ante* or to otherwise regulate the relationship of the parties pending exhaustion of the arbitration process. This would cut deeply into the policy of the Norris-LaGuardia Act and make the courts potential participants in a wide range of arbitrable disputes under the many existing and future collective-bargaining contracts, not just for

> the purpose of enforcing promises to arbitrate, which was the limit of *Boys Markets*, but for the purpose of preliminarily dealing with the merits of the factual and legal issues that are subjects for the arbitrator and of issuing injunctions that would otherwise be forbidden by the Norris-LaGuardia Act. 44 U.S.L.W. at 5350 (footnotes omitted).

The Company contends that there are significant differences between the work stoppages in this case and the "sympathy strike" in *Buffalo Forge*. It claims that the stranger pickets whose presence triggered the work stoppages were dissident West Virginia coal miners who are roving through the coal fields shutting down mines as an extension of an illegal strike begun at the Cedar Coal Company's mines in Kanawa County, West Virginia. Although the District Court did not expressly identify the stranger pickets, we are willing to assume for purposes of this opinion that the stranger picketlines were established by a roving band of mine workers engaged in an illegal strike at another mine. However, we do not accept the assumption proposed by the Company that the local unions by respecting the stranger picketlines somehow ratified the illegal West Virginia strike and adopted its goals as their own. The record does not support such a proposition. The Company attempts to distinguish the sympathy strike in *Buffalo Forge* from the refusal to cross in this case by contending that in *Buffalo Forge* the primary pickets and the sympathy strikers were members of different bargaining units, whereas in this case the stranger pickets and the local miners are all members of the same bargaining unit working under a single national contract. Thus, the employer reasons, the membership of the local unions stands to benefit from resolution of the primary strike favorable to the mineworkers. Just why this is so the Company does not elaborate. By claiming that the local miners have adopted the goals of the illegal strike, without being explicit as to their nature, the Com-

pany is asking this Court to conclude that this is not really a refusal-to-cross situation but a case where the locals have joined an illegal primary strike over arbitrable issues – a paradigm case for a *Boys Market* injunction. This we decline to do. The Bituminous Coal Wage Agreement provides that local disputes be grieved and arbitrated on a mine-by-mine basis.[6] The only benefit to be derived by the local unions from favorable settlement of the West Virginia strike is indirect, at best, and highly speculative. Accordingly, the bare assertion that all mine workers are members of the same bargaining unit and working under a national contract adds little to the central inquiry in *Boys Markets* cases – whether the employees sought to be enjoined are striking over issues which they have agreed to arbitrate. We cannot conclude on the present state of the record that the locals' refusal to cross the stranger picketlines amounted to ratification of and active participation in an illegal strike.[7]

Nor do we believe that the legality or illegality of the primary picketing is a valid basis for distinguishing *Buffalo Forge*. The company contends that a court must issue an injunction against a union which refuses to cross an illegal picketline or else it sanctions open support of illegal conduct. The Company claims it would be anomalous to regard a secondary strike as non-enjoinable when it is in support of a primary strike which is illegal, and hence enjoinable. The glaring defect in this argument is that it improperly shifts the focus of the court's inquiry from the employees against whom

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[6] National Bituminous Coal Wage Agreement, Act. XXIII, § (c). By appeal to the Arbitration Review Board, conflicting decisions of local arbitrators may be harmonized. However, we are not persuaded that the mere possibility of central review by the Board significantly strengthens the Company's argument.

[7] *Compare Food Fair Stores, Inc.* v. *Food Drivers Local 500*, 363 F. Supp. 1254, 1256 (E.D. Pa. 1973). *See* Abrams, *The Labor Injunction and the Refusal to Cross Another Union's Picket Line*, 26 CASE W. RES. L. REV. 178, 194 n. 87 (1975) (hereinafter Abrams).

the injunction is sought to the illegal pickets. Not only does this raise problems of proof because the initial strikers will often not be parties to the action, but it also places the burden of making complex judgments as to the legality of the primary line on the employees faced with the decision whether or not to cross. If they refuse to cross, they run the risk of injunction, damages and civil contempt. Both *Boys Markets* and *Buffalo Forge* teach quite explicitly that the proper focus of judicial attention in a § 301(a) injunctive action should be on the employees sought to be enjoined. The "narrow exception" to the Norris-LaGuardia Act perceived in *Boys Markets* may only be invoked where the union defending the action has struck "over a grievance which both parties are contractually bound to arbitrate." 398 U.S. at 254. As the Supreme Court reiterated in *Buffalo Forge*, "there is no general federal anti-strike policy". 44 U.S.L.W. at 5350, *citing Sinclair Refining Co.* v. *Atkinson*, 370 U.S. at 225 (Brennan, J., dissenting). It is only when an injunction is required to vindicate the contractual arbitration process that the anti-injunction policy of the Norris-LaGuardia Act will be accommodated to satisfy the public policy favoring peaceful settlement of labor disputes through arbitration. *Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. at 253. The key to issuance of a *Boys Markets* injunction is a finding that the issue underlying the work stoppage is arbitrable. In this case however, the District Court found that there was "no arbitrable grievance underlying the work stoppage", but rather the work stoppage resulted from the miners' reluctance to cross the stranger picketlines. Thus, as in *Buffalo Forge*, whether motivated by sympathy or fear of reprisal, the work stoppage was not caused by an arbitrable dispute between the mine workers and the employer. The strike had "neither the purpose or the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain." *Buffalo Forge Co.* v. *United Steelworkers of America*, 44 U.S.L.W. at 5439. *Accord, U.S. Steel Corp.* v. *United Mine*

Workers, 418 F. Supp. 172, 174-75 (W.D. Pa. 1976) *aff'd* — F.2d — (3d Cir. Dec. 20, 1976). *See also Plain Dealer Publishing Co.* v. *Cleveland Typo. Union #53*, 520 F.2d 1220 (6th Cir. 1975).[8] The legality of the primary picketing is irrelevant. *See Island Creek Coal Co.* v. *United Mine Workers*, 507 F. 2d 650, 652 n. 3 (3d Cir. 1975). *Buffalo Forge* also requires us to reject the Company's contention that the arbitration clause in the collective bargaining agreement is broad enough to encompass the issue of whether the union had contracted away the employees' right to honor picketlines. The Bituminous Coal Wage Agreement of 1974 contains a broad arbitration provision which provides for arbitration of differences over the meaning and application of the contract and any "local trouble." Although the broad arbitration clause could, on its face, include the refusal to cross a picketline, the absence of an express no-strike clause in the contract is fatal to the Company's claim of arbitrability. In *Kellogg Co.* v. *NLRB*, 457 F. 2d 519, 525 (6th Cir. 1972), we stated that the employees' right to honor another's picketline may only be waived through "clear and unmistakable language." Justice Black in *NLRB* v. *Rockaway News Co.*, 345 U.S. 71, 81 (1953) (Black, J., dissenting), offered one explanation why waiver of the right to honor picketlines may not lightly be read into collective bargaining agreements:

> One way some union men help others is to refrain from crossing picket lines. Habitual respect for union picket lines has long been the practice of union men. This practice has been a prized asset of the unions. The Taft-Hartley Act was designed to regulate and restrict

[8] As the Court observed in the *Plain Dealer* opinion:

> [T]here is a clear difference between a labor dispute which results from a work stoppage and a work stoppage which is the result of a labor dispute arising from conditions of employment. . . . The latter is enjoinable. . . . [not] the former. . . .

520 F. 2d at 1227.

> the type of concerted activities in which employees could engage. But even that Act did not attempt to deprive unions of the advantage of a policy that required union men to respect picket lines.

The present Court apparently shares Justice Black's view since both the majority and dissenting justices in *Buffalo Forge* agreed that an implied no-strike agreement does not extend to sympathy strikes. The majority opinion remarked, "[t]o the extent that . . . courts . . . have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong." 44 U.S.L.W. at 5350 n. 10. *Accord*, *id.* at 5355 n. 17 (dissenting opinion). The Bituminous Coal Wage Agreement of 1974 does not contain an express no-strike clause so the issue of the union's right to refuse to cross a picketline is not even arguably arbitrable. Since the unions' refusal to cross the stranger picketlines did not involve an arbitrable dispute between the employer and its employees, it is non-enjoinable, *see Buffalo Forge Co.* v. *Retail Clerks Union*, 44 U.S.L.W. at 5355 n. 20 (dissent), and therefore cannot provide a basis for contempt citations. *See United States Steel Corp.* v. *United Mine Workers of America*, 519 F. 2d 1236, 1249 (5th Cir. 1976).[9] We are not insensitive to the plight of the Company whose mines are shut down by reason of a labor dispute to which it isn't a party. However, unlike the employer in *Buffalo Forge*, the Company here does have recourse in the courts to reopen the mines. If the stranger pickets are there illegally, as it seems they are, the employer may resort to various legal

[9] One case supporting the Company's position is *Armco Steel Corp.* v. *United Mine Workers of America*, 505 F. 2d 1129 (4th Cir. 1974). In that case, the Fourth Circuit found that the district court had the power to enjoin the miners' refusal to cross stranger picketlines established by unidentified pickets. However, in *Buffalo Forge*, *Armco* was listed among the decisions which the Court said were at odds with the opinion which it affirmed. 44 U.S.L.W. at 5348 n. 9. The Court also expressly overruled the assumption made in *Armco* that a mandatory arbitration clause implies a duty not to engage in sympathy strikes. *Id.* at 5350 n. 10.

remedies directed at the illegal pickets.[10] After the stranger pickets are dispersed, the membership of the local unions will be free to return to work. We realize that this raises some practical difficulties for the employer, but the alternative is to hold the union to a bargain it never made and impermissibly interject the federal courts into the collective bargaining process.

We now turn to the final issues on appeal, the unions' contention that the preliminary injunctions are overbroad and vague.[11] Specifically, the unions charge that the injunctions amount to an outright ban on all work-stoppages during the life of the contract, without regard to the arbitrability of the underlying disputes. This, they claim, exceeds the "narrow exception" to the Norris-LaGuardia Act recognized in *Boys Markets* and violates § 9 of the Act which limits the scope of injunctions issued in cases involving labor disputes.[12] Finally, the unions submit that the decrees are

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[10] If the stranger pickets are engaged in a secondary boycott, the employer may pursue remedies before the National Labor Relations Board alleging violation of § 8(b)(4) of the National Labor Relations Act, 29 U.S.C. § 158(b)(4) (1970). The Board is required to give expedited treatment to a secondary boycott charge and, if there is "reasonable cause to believe the charge is true," the Board must go to court and seek an injunction under § 10(1) of the Act. 29 U.S.C. § 160(1) (1970). If violence is threatened. § 7 of the Norris-LaGuardia Act permits injunctive relief to clean up the line. *See generally Abrams, supra* at 195 n. 92, 197 n. 104, 210 n. 158.

[11] Overbreadth and vagueness are distinct concepts:

> Analytically, the broadness of an injunction refers to the range of proscribed activity, while vagueness refers [to] the particularity with which the proscribed activity is described. Developments in the Law — Injunctions, 78 Harv.L.Rev. 994, 1064 (1965). "Vagueness" is a question of notice, i. e., procedural due process, and "broadness" is a matter of substantive law. *See* Wright & Miller, Federal Practice & Procedure 2953 at 546-47 (1973).

United States Steel Corp. v. *United Mine Workers of America*, 519 F. 2d 1236, 1246 n. 19 (5th Cir. 1975).

[12]

> [E]very restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

29 U.S.C. § 109 (1970).

impermissibly vague because they fail to conform to the requirement of Rule 65(d) that injunctions "be specific in terms" and "describe in detail and not by reference to the complaint or other document, the act or acts sought to be restrained." Fed. R. Civ. P. 65(d). The Company denies that the Court's orders are vague and argues that an injunction need not be restricted to past acts specifically pleaded and proved where a union has shown a proclivity to strike over arbitrable grievances and the court has found that similar strikes are likely to recur. Thus, we are presented with the fundamental question of whether an injunction restraining a work stoppage may ever be prospective in effect and, if so, under what circumstances.

A number of circuit courts have addressed the question, but have failed to reach a consensus. In *Old Ben Coal Corp.* v. *Local No. 1487, UMW*, 500 F. 2d 950 (7th Cir. 1974), the Seventh Circuit upheld an injunction that permanently enjoined the union from striking over differences it was bound to arbitrate under the National Bituminous Coal Wage Agreement of 1971. The final decree incorporated the language of the arbitration clause. The district court had found that the union followed a policy of ignoring the contractual grievance and arbitration machinery in favor of wildcat strikes over arbitrable disputes. In upholding the injunction, the Seventh Circuit mentioned that a broad restraint on future strikes was the only adequate remedy to relieve the employer from irreparable injury caused by the numerous work stoppages. *Id.* at 953. The Seventh Circuit interpreted *Boys Markets* as permitting injunctions as broad as necessary to protect the arbitration process and declared that "the breadth of an injunction is to be determined by the extent of the misconduct." *Id.* The *Old Ben* Court also held that incorporation

of the contractual language cured the decree of vagueness. *Id.* In *C F & I Steel Corp.* v. *United Mine Workers of America*, 507 F. 2d 170 (10th Cir. 1974), the Tenth Circuit followed *Old Ben* and affirmed the grant of prospective injunctive relief. Unlike the *Old Ben* injunction, the order in *CF & I* was limited to specific areas of dispute which had led to work stoppages in the past. Finding nothing in *Boys Markets* inconsistent with equitable relief directed at future conduct and relying on the standards for judging the permissible breadth of injunctions announced in *NLRB* v. *Express Publishing Co.*, 312 U.S. 426, 436-37 (1941), and applied in *NLRB* v. *Local 282, Teamsters*, 428 F. 2d 994, 999 (2d Cir. 1970), the Tenth Circuit ruled that a prospective injunction may issue where a union has shown a proclivity to strike over arbitrable disputes.[13] Id. at 174-77. The Court dismissed the union's argument that the injunction violated § 9 of the Norris-LaGuardia Act because the union had adequate notice that the Company was seeking injunctive relief against future violations of the implied no-strike agreement. *Id.* at 176. In *Donovan Construction Co.* v. *Construction & Maintenance Laborers Union, Local 383*, 533 F. 2d 481, 484-86 (9th Cir. 1976), the Ninth Circuit announced its willingness to join the Seventh and Tenth Circuits in ordering prospective injunctive relief whenever a party "can adduce convincing evidence that the anticipated labor dispute is likely to occur, and that the harm threatened thereby is of such magnitude as to bring his situation within the *Boys Markets* guidelines."[14] *Id.* at 484.

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[13] The *CF&I* Court has been criticized for applying standards developed in public law cases to a § 301 action, which is essentially a private contracts suit. *See United States Steel Corp.* v. *United Mine Workers of America*, 519 F. 2d 1236, 1247 n. 21 (5th Cir. 1975); *United States Steel Corp.* v. *United Mine Workers of America*, 534 F. 2d 1063, 1076 (3d Cir. 1976).

[14] The Ninth Circuit vacated the injunction in *Donovan* as overbroad because of the insufficiency of factual support in the record for a prospective decree:

In *United States Steel Corp.* v. *United Mineworkers of America*, 519 F. 2d 1236 (5th Cir. 1975), the Fifth Circuit took the opposite position and indicated that prospective injunctive relief may never be granted in a § 301 action. Judge Wisdom, writing for the Court, held that the broad prospective injunction issued by the district court exceeded the limits of *Boys Markets* and thus violated the Norris-LaGuardia Act. *Id.* at 1245. Repeating the warning from *Boys Markets* that not every strike over an arbitrable dispute is enjoinable, Judge Wisdom expressed the belief that the guidelines set down in *Boys Markets* require case-by-case adjudication whenever an injunction is sought against a particular work stoppage. *Id.* He characterized the prospective injunction issued by the district court as "the very evil Norris-LaGuardia sought to remedy," and observed that the decree embodied the presumption that every strike during the life of the contract would violate the court's order and force the union to litigate the applicability of *Boys Markets* in contempt proceedings. *Id.* He also concluded that the injunction violated § 9 of the Norris-LaGuardia Act because the decree was not limited to specific acts referred to in the complaint. *Id.* at 1249. The lack of specificity in the terms of the injunction, according to Judge Wisdom, also rendered

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> We read this to mean that each restraint imposed by a *Boys' Markets* injunction must be grounded on a finding by the District Court that the activity restrained is a proper subject for injunctive relief despite the Norris-LaGuardia Act. If the scope of the injunction is so broad as to enjoin union activity in situations that the court *could not have found* to be suitable for *Boys Markets* relief, because of the paucity of factual support for the necessary findings, the injunction crosses the jurisdictional boundary of the Norris-LaGuardia Act. We believe the injunction here crossed that boundary.
>
> The record before us provides no evidence other than a single work stoppage that future strikes were likely, that they would cause irreparable harm, that there was no adequate remedy at law, or that the employer would suffer more from the denial of the injunction than would the union from its issuance.

533 F. 2d at 486 (emphasis in the original).

the injunction impermissibly vague in violation of Rule 65(d) despite the incorporation of language from the collective bargaining agreement in the order. *Id.* Thus, in the Fifth Circuit it appears that a prospective injunction may never issue in a case arising out of a labor dispute and an employer faced with a series of wildcat strikes must adjudicate each work stoppage on a case-by-case basis.

The Third Circuit became the most recent entry in the field with its decision in *United States Steel Corp.* v. *United Mine Workers of America*, 534 F. 2d 1063 (3d Cir. 1976). Precisely defining the position of the Third Circuit is complicated by the fact that each member of the panel filed a separate opinion. Judge Gibbons wrote the main opinion in which Judge Rosenn concurred with Chief Judge Seitz concurring in the result. Although the Court of Appeals reversed the trial court and vacated the injunction as vague and overbroad, Judge Gibbons, with Judge Rosenn concurring, stated that federal courts in § 301 actions had the power to enjoin prospectively "a pattern of contract violations." *Id.* at 1078. In reaching this conclusion, Judge Gibbons reviewed the precedents in other circuits and discussed at length Judge Wisdom's belief that *Boys Markets* required case-by-case adjudication and thus barred prospective relief:

> The power of a federal court to decide the meaning of a labor agreement in a § 301 suit is clear. Once it has been done so it should not be required to relitigate essentially the same issue in a slightly different context over and over again. If the plaintiff in a § 301 suit pleads and proves that the defendant, whether labor organization or employer, is engaging in a pattern of conduct which results in repeated and similar violations, nothing in § 9 of the Norris-LaGuardia Act, as we read it, prevents an injunction directed at such a course of conduct. The court that has once determined in an adversary proceeding the meaning of a contract must have the power to protect the parties and itself from the necessity for and burden of repeatedly adjudicating what

> often may be the identical issue. And while we agree with Judge Wisdom that the *Lincoln Mills-Boys Markets* exception to the Norris-LaGuardia Act requires ad hoc adjudication relating the violation to the contract, we do not agree that a remedial injunction may not encompass a pattern of ongoing activity. It is by no means clear that Judge Wisdom intended to suggest that injunctive relief is entirely unavailable against a chronic pattern of continuing mischief. If he did, however, we respectfully disagree.

Id. at 1077. He also commented on the factual findings a district court should make in determining the breadth of a prospective injunction:

> Prospective injunctive relief should go as far as, but no farther than, the pattern of violations suggests is necessary. Before prospective injunctive relief is ordered the district court must, we think, make specific findings based on evidence in the record as to the types of violations which have occurred in the past and limit injunctive relief to the likelihood of their recurrence, or to new and different kinds of violations which may be expected to occur in the future. *Id.*

Judges Gibbons and Rosenn parted ways, however, on the issue of whether an injunction may ever be phrased as broadly as the arbitration clause of the collective bargaining agreement Judge Gibbons expressed the fear that an overbroad injunction would unfairly tip the economic balance in favor of the employer:

> A blanket injunction in the language of the arbitration clause places in the hands of the successful § 301 plaintiff a weapon by which harassment by contempt citations may take the place of the normal ongoing collective bargaining process. No § 301 defendant should be subjected to that risk.

Id. at 1078 (footnote omitted). Judge Rosenn, on the other hand, would permit an injunction as broad as the arbitration clause whenever strikes in violation of the no-strike agreement are so widespread as to defy categorization. *Id.* at 1082-83. In summary, the circuit precedents on the permissible breadth of injunctive relief in § 301 actions are far from uniform. The Tenth, Ninth and Third Circuits would appear to sanction prospective injunctive relief against specifically identified contractual violations which have occurred in the past and are likely to recur in the future. The Seventh Circuit would permit an injunction as broad as the contractual arbitration clause, and the Fifth Circuit would seem to bar any injunctive relief against future strikes.

We prefer to take an intermediate position. We see nothing in *Boys Markets* that is inconsistent with a grant of prospective injunctive relief in the exercise of § 301 jurisdiction. Justice Brennan, the author of the *Boys Markets* decision, clearly envisioned the possibility of prospective relief in his *Sinclair* dissent:

> The complaint alleged that the union had, over the past several months, repeatedly engaged in "quickie" strikes over arbitrable grievances. Under the contract and the complaint, then, the District Court might conclude that there have occurred and will continue to occur breaches of contract of a type to which the principle of accommodation applies. It follows that rather than dismissing the complaint's request for an injunction, the Court should remand the case to the District Court with directions to consider whether to grant the relief sought—an injunction against future repetitions. This would entail a weighing of the employer's need for such an injunction against the harm that might be inflicted upon legitimate employee activity. It would call into question the feasibility of setting up *in futuro* contempt sanctions against the union (for striking) and against the employer (for refusing to arbitrate) in regard to prospective disputes which might fall more or less clearly into the adjudicated category of arbitrable grievances. In short, the District Court will have to consider with great care whether it is possible to draft a decree which would deal equitably with all the interests at stake.

Sinclair Refining Co. v. *Atkinson*, 370 U.S. at 228-29.

It cannot seriously be disputed that a series of wildcat strikes in derogation of a mandatory arbitration clause can severely cripple a mine's production rate causing the mine owner irreparable injury and leave the contractual arbitration machinery in shambles. In *Boys Markets* the Supreme Court described a union's no-strike obligation, express or implied, as the *quid pro quo* for the employer's undertaking to submit disputes to the arbitration process. 398 U.S. at 248. Wide-scale disregard of the union's no-strike obligation deprives the employer of the benefit of the bargain struck during the negotiations and threatens the underpinnings of the arbitration process. For this reason, federal courts are empowered by § 301(a) to specifically enforce arbitration agreements where one party is attempting to evade its contractual responsibility. As the *Boys Markets* majority observed:

> . . . the fact remains that the effectiveness of such agreements would be greatly reduced if injunctive relief were withheld. Indeed, the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlement of industrial disputes without resort to strikes, lockouts, or other self-help measures. This basic purpose is obviously largely undercut if there is no immediate, effective remedy for those very tactics that arbitration is designed to obviate.

Id. at 249. An employer faced with the tactic of repeated strikes over arbitrable grievances need not repair to federal court each time his plant is shut down to relitigate issues decided in previous litigation. *See United States Steel Corp.*

v. *United Mine Workers of America*, 534 F. 2d at 1077. Once a court has found that a union is engaged in a continuing practice of striking over arbitrable disputes and the *Boys Markets* guidelines are satisfied, we believe that the ensuing injunction may be extended to encompass future strikes over disputes similar to those which caused strikes in the past. To unduly restrict the scope of injunctive relief deprives the employer of an "immediate, effective remedy" and defeats the national policy of fostering arbitration. We join those courts which have concluded that granting prospective injunctive relief in appropriate cases is consistent with the accomodation reached in *Boys Markets* between the policies of the Norris-LaGuardia Act and the public policy encouraging peaceful settlement of labor disputes through arbitration.

Our holding that prospective injunctive relief may be appropriate in § 301 actions should not be construed to reflect an insensitivity to the dangers posed by overbroad injunctions. We share Judge Wisdom's concern that the indiscriminate issuance of blanket injunctions by over-zealous courts could signal a return to the pre-Norris-LaGuardia era of ad hoc sweeping anti-strike decrees. Even though we believe that § 9 of the Norris-LaGuardia Act must be accommodated where necessary to conform to national labor policy, § 9 still requires a court to issue the narrowest possible injunction necessary to effectively safeguard the plaintiff's rights. *Cf. International Assoc. of Machinists* v. *Street*, 367 U.S. 740, 773 (1961). We need not decide here whether a court should ever issue an injunction as broad as the contractual arbitration clause.[15] We note however, that a court called on to supervise a blanket injunction runs a grave risk of becoming ensnarled in the private relationship of the parties and substituting its interpretation of the collective bargaining agreement for that of the arbitrator. A overbroad injunction presents the same

[15] *But see United States Steel Corp.* v. *United Mine Workers of America*, 534 F. 2d at 1081 n. 7, 1082-83 (Rosenn, J.).

risk of excessive judicial entanglement that led the Supreme Court in *Buffalo Forge* to reject the argument that the arbitrability of the scope of the no-strike clause was itself sufficient basis for a *Boys Market* injunction. The practical effect of an overbroad prospective injunction is to permit specific enforcement of the union's no-strike obligation through the contempt power, a result that *Buffalo Forge* may not countenance. Courts should be wary of introducing new weapons into the economic struggle between labor and mangament.[16] *See Pittsburgh Plate Glass Co.* v. *NLRB*, 427 F. 2d 936, 946 (6th Cir. 1970) *aff'd* 404 U.S. 157 (1971). An overbroad injunction inhibits the exercise of important employee rights and induces the employer to resort to the courts for contempt proceedings rather than to submit disputes to arbitration. Thus, an overbroad injunction sacrifices the national policy of avoiding interference in the private economic affairs of the parties without furthering the cause of arbitration. Therefore, prospective injunctions should only be granted in extreme cases where absolutely necessary to preserve the arbitration process agreed to by the parties. The decree must be narrowly drawn and firmly grounded on factual support in the record. Before an injunction may issue which grants prospective relief, the District Court should expressly find: that the present strike may be enjoined under *Boys Markets*;[17] that the union has engaged in a pattern of strikes over arbitrable grievances that is likely to continue; that the strikes constituting the pattern of violation would warrant relief under the *Boys Markets* formula; and, that the decree is limited to specifically identified areas of dispute which have already been adjudicated and which satisfy the *Boys Markets* guidelines.

[16] An injunction restraining a work stoppage may often settle the underlying labor dispute prematurely and permanently. *See Buffalo Forge Co.* v. *Retail Clerks Union*, 44 U.S.L.W. at 5351. For this reason, the injunctive remedy should be used sparingly. *See generally* Abrams, *supra* at 200, 205-06.

[17] *But see CF&L Steel Corp.* v. *United Mine Workers of America*, 507 F. 2d at 176.

Applying these standards, we are constrained to agree with the local unions that the preliminary injunctions issued in this case are overbroad and must be vacated. The injunctions amount to nothing less than a court order that the employees report to work daily during the pendency of the action. We also conclude that the factual findings made by the District Court cannot support the breadth of the injunction. To sustain a prospective injunction, a court must make detailed findings concerning the pattern of past work stoppages and the likelihood of their recurrence and relate those findings to the *Boys Markets* formula. Taking judicial notice that strikes have occurred in the past over arbitrable grievances is not sufficient. *See United States Steel* v. *United Mine Workers of America*, 534 F. 2d at 1077; *Donovan Construction Co.* v. *Construction, Production & Maintenance Laborers Union, Local* 383, 533 F. 2d at 486. To the extent that prior work stoppages were occasioned by the miners' refusal to cross picketlines set up at the mines, *Buffalo Forge* prevents their inclusion in the District Court's finding of an ongoing pattern of strikes subject to *Boys Markets* injunctions. We also conclude that the injunctions were impermissiblly vague in violation of Rule 65(d), and that this vagueness was not cured by reference to the contractual arbitration provision.[18] The orders restrained the local unions from "any further work stoppages" and thus, by implication, included work stoppages that the court would have no power to enjoin. Even if the decrees were limited to work stoppages over issues subject to the arbitration clause, the unions could only gauge their conduct by reference to the Bituminous Coal Wage Agreement of 1974, and then be forced to test their interpretation of that agreement through contempt proceedings. Rule 65 requires that injunctions be specific "so that those who must obey them will know what

[18] However, we find that the unions did receive ample notice from the amended complaint of the Company's intention to seek prospective relief and reject the contention to the contrary. See *CF&I Coal Co.* v. *United Mine Workers of America*, 507 F. 2d at 176.

the court intends to require and what it intends to forbid." *Longshoremen* v. *Marine Trade Assoc.*, 389 U.S. 64, 79 (1968). The orders issued in this case do not inform the parties exactly what it is that the Court expects of them. A better course would have been to include instructions informing the parties of specific steps they must take to prevent a recurrence of the illegal work stoppages.[19] *See United States Steel Corp.* v. *United Mine Workers of America*, 534 F. 2d at 1078. Finally, a decree granting prospective relief must include an order to the employer directing him to arbitrate all grievances within the scope of the injunction. *See Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. at 254. The parties have raised a number of other issues which we have considered and find to be without merit. For the reasons stated above, we vacate the injunctions granted by the District Court and remand for proceedings not inconsistent with this opinion.

[19] The District Court should also consider whether there are any viable alternatives to issuance of a prospective injunction. For instance, even where injunctive relief is not available courts may order arbitration of the underlying issues if the contract so provides. *See Buffalo Forge Co.* v. *United Steelworkers of America*, AFL-CIO, 44 U.S.L.W. at 5349. The Court, within the exercise of its equitable power, may also require expedition of the arbitration process where necessary to prevent "foot-dragging" in the submission of disputes to arbitration. *See generally* Abrams, *supra* at 186 n. 39, 197 n. 45, 211 n. 163.

APPENDIX G. FEBRUARY 11, 1977

JUDGMENT OF THE COURT OF APPEALS IN CASE NO. 75-2392

(Filed February 11, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-2392

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellees,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,

LOCAL UNION NO. 1957, ETC.,
Defendant-Appellant.

Before: PHILLIPS, Chief Circuit Judge, and WEICK and CELEBREZZE, Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the injunctions of said

District Court in this cause be and the same are hereby vacated and the cause remanded for further proceedings.

Each party to pay own costs on appeal.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate: March 15, 1977

A True Copy.

Attest:
/s/ DARLENE KOENIG
Deputy Clerk

APPENDIX H. FEBRUARY 11, 1977

JUDGMENT OF THE COURT OF APPEALS IN CASE NO. 75-2393

(Filed February 11, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-2393

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants-Appellees.

Before: PHILLIPS, Chief Circuit Judge, and WEICK and CELEBREZZE, Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the injunctions of said District Court in this cause be and the same are hereby vacated and the cause remanded for further proceedings.

Each party to pay own costs on appeal.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate: March 15, 1977

A True Copy.

Attest:
/s/ DARLENE KOENIG
Deputy Clerk

APPENDIX I. FEBRUARY 11, 1977

JUDGMENT OF THE COURT OF APPEALS IN CASE NO. 75-2394

(Filed February 11, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-2394

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants-Appellees.

Before: PHILLIPS, Chief Circuit Judge, and WEICK and CELEBREZZE, Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the injunctions of said District Court in this cause be and the same are hereby vacated and the cause remanded for further proceedings.

Each party to pay own costs on appeal.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate: March 15, 1977

A True Copy.

Attest:
/s/ DARLENE KOENIG
Deputy Clerk

APPENDIX J. FEBRUARY 11, 1977

JUDGMENT OF THE COURT OF APPEALS IN CASE NO. 75-2395

(Filed February 11, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-2395

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants-Appellees.

Before: PHILLIPS, Chief Circuit Judge, and WEICK and CELEBREZZE, Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the injunctions of said District Court in this cause be and the same are hereby vacated and the cause remanded for further proceedings.

Each party to pay own costs on appeal.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate: March 15, 1977

A True Copy.

Attest:
/s/ DARLENE KOENIG
Deputy Clerk

APPENDIX K. FEBRUARY 11, 1977

JUDGMENT OF THE COURT OF APPEALS IN CASE NO. 75-2396

(Filed February 11, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 75-2396

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellees,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,

LOCAL UNION NO. 1890, ET AL.,
Defendants-Appellants.

Before: PHILLIPS, Chief Circuit Judge, and WEICK and CELEBREZZE, Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the injunctions of said District Court in this cause be and the same are hereby vacated and the cause remanded for further proceedings.

Each party to pay own costs on appeal.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate: March 15, 1977

A True Copy.

Attest:
/s/ DARLENE KOENIG
Deputy Clerk

APPENDIX L. FEBRUARY 11, 1977

JUDGMENT OF THE COURT OF APPEALS IN CASE NO. 76-2031

(Filed February 11, 1977)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 76-2031

SOUTHERN OHIO COAL COMPANY, ET AL.,
Plaintiffs-Appellants,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Defendants,

LOCAL UNION NO. 1890, ET AL.,
Defendants-Appellees.

Before: PHILLIPS, Chief Circuit Judge, and WEICK and CELEBREZZE, Circuit Judges.

JUDGMENT

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the injunction of said

District Court in this cause be and the same are hereby vacated and the cause remanded for further proceedings.

Each party to pay own costs on appeal.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate: March 15, 1977

A True Copy.

Attest:

/s/ DARLENE KOENIG
Deputy Clerk